

REMARKS

Applicant has provided herewith, those of the documents requested by the Office that are available at the present time. Though obtained from different or relocated sources the documents presently furnished are believed to correspond in all material respects with those filed originally. Owing to a move of applicant's representatives to the firm indicated below difficulty has been encountered in locating representative's file copies of the relevant documents.

Election

Applicant hereby elects the invention of Group 1, comprising claims 35-43 and 98.

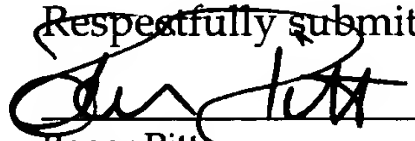
Independent claims 44, 64, 68, 75 and 101 have been amended to relate to the elected invention. The bill-of-exchange or first bill-of-exchange recited in independent claims 44, 64, 68, 75 and 101 is an embodiment of the payment draft defined in claim 35. Furthermore, so that the Office need have no question in this respect, claims 44, 64, 68, 75 and 101 have been made coterminous with base claim 35 with respect to the recitation of the bill of exchange as being event-activated, prerelease and latent.

As now amended, combination claims 44, 64, 68, 75 and 101 in substance require the characteristics of sub-combination claim 35. Accordingly, the inventions of the amended claims are not distinct. (See MPEP 806.05(c)I.) In light of the amendments to restrict all claims of record to the elected invention, no claim has been withdrawn.

The amendment to claims 44, 64, 68, 75 and 101 is made to enable the claims to be examined in the present application. The amendment is believed made without narrowing or by making explicit subject matter which was inherent in the respective claim before amendment.

The term "prerelease bill of latent", page 4, line 6 from the bottom of the Office action is not understood by Applicant. It has been read as though "prerelease bill-of-exchange" were written.

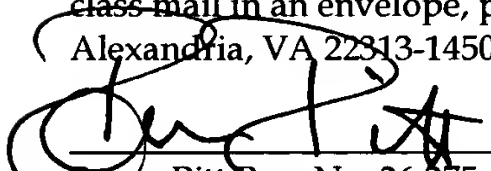
In view of the above amendments and the discussion relating thereto, it is respectfully submitted that the instant application, as amended, is in condition for allowance. Such action is most earnestly solicited. If for any reason the Examiner feels that consultation with Applicant's representative would be helpful in the advancement of the prosecution, he is invited to call the telephone number below for an interview.

Respectfully submitted,
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope, postage prepaid, addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 19, 2005.


Roger Pitt Reg. No. 26,275

**Convention Providing a Uniform Law For Bills
of Exchange and Promissory Notes
(Geneva, 1930) The League of Nations**

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**Convention Providing a Uniform Law For Bills of
Exchange and Promissory Notes
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**Convention Providing a Uniform Law
For Bills of Exchange and Promissory
Notes
(Geneva, 1930) The League of**

Nations

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2

TITLE I - Bills of Exchange

3

CHAPTER I. - Issue and Form of a Bill of Exchange

4

Article 1

5

A bill of exchange contains:

6

1. The term 'bill of exchange' inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;

7

2. An unconditional order to pay a determinate sum of money;

8

3. The name of the person who is to pay (drawee);

9

4. A statement of the time of payment;

10

5. A statement of the place where payment is to be made;

11

6. The name of the person to whom or to whose order payment is to be made;

12

7. A statement of the date and of the place where the bill is issued;

13

8. The signature of the person who issues

the bill (drawer).

14

Article 2

15

An instrument in which any of the requirements mentioned in the preceding Article is wanting is invalid as a bill of exchange, except in the cases specified in the following paragraphs:

16

A bill of exchange in which the time of payment is not specified is deemed to be payable at sight.

17

In default of special mention, the place specified beside the name of the drawee is deemed to be the place of payment, and at the same time the place of the domicile of the drawee.

18

A bill of exchange which does not mention the place of its issue is deemed to have been drawn in the place mentioned beside the name of the drawer.

19

Article 3

20

A bill of exchange may be drawn payable to drawer's order. It may be drawn on the drawer himself. It may be drawn for account of a third person.

21

Article 4

A bill of exchange may be payable at the domicile of a third person either in the locality where the drawee has his domicile or in another locality.

Article 5

When a bill of exchange is payable at sight, or at a fixed period after sight, the drawer may stipulate that the sum payable shall bear interest. In the case of any other bill of exchange, this stipulation is deemed not to be written (non Šcite).

The rate of interest must be specified in the bill; in default of such specification, the stipulation shall be deemed not to be written (non Šcite).

Interest runs from the date of the bill of exchange, unless some other date is specified.

Article 6

When the sum payable by a bill of exchange is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. Where the sum payable by a bill of exchange is expressed more than once in words or more than once in figures, and there is a discrepancy, the smaller sum is the sum

payable.

29

Article 7

30

If a bill of exchange bears signatures of persons incapable of binding themselves by a bill of exchange, or forged signatures, or signatures of fictitious persons, or signatures which for any other reason cannot bind the persons who signed the bill of exchange or on whose behalf it was signed, the obligations of the other persons who signed it are none the less valid.

31

Article 8

32

Whosoever puts his signature on a bill of exchange as representing a person for whom he had no power to act is bound himself as a party to the bill and, if he pays, has the same rights as the person for whom he purported to act. The same rule applies to a representative who has exceeded his powers.

33

Article 9

34

The drawer guarantees both acceptance and payment. He may release himself from guaranteeing acceptance- every stipulation by which he releases himself from the guarantee of payment is deemed not to be written (non Scrite).

35

Article 10

If a bill of exchange, which was incomplete when issued, has been completed otherwise than in accordance with the agreements entered into, the non-observance of such agreements may not be set up against the holder unless he has acquired the bill of exchange in bad faith or, in acquiring it, has been guilty of gross negligence.

CHAPTER II. - Endorsement

Article 11

Every bill of exchange, even if not expressly drawn to order, may be transferred by means of endorsement.

When the drawer has inserted in a bill of exchange the words 'not to order' or an equivalent expression, the instrument can only be transferred according to the form, and with the effects of an ordinary assignment.

The bill may be endorsed even in favour of the drawee, whether he has accepted or not, or of the drawer, or of any other party to the bill. These persons may re-endorse the bill.

Article 12

An endorsement must be unconditional. Any condition to which it is made subject is

deemed not to be written (non Šcrite). A partial endorsement is null and void. An endorsement 'to bearer' is equivalent to an endorsement in blank.

44

Article 13

45

An endorsement must be written on the bill of exchange or on a slip affixed thereto (allonge). It must be signed by the endorser.

46

The endorsement may leave the beneficiary unspecified or may consist simply of the signature of the endorser (endorsement in blank). In the latter case, the endorsement, to be valid, must be written on the back of the bill of exchange or on the slip attached thereto (allonge).

47

Article 14

48

An endorsement transfers all the rights arising out of a bill of exchange. If the endorsement is in blank, the holder may:

49

1. Fill up the blank either with his own name or with the name of some other person;

50

2. Re-endorse the bill in blank, or to some other person;

51

3. Transfer the bill to a third person without filling up the blank, and without endorsing it.

Article 15

In the absence of any contrary stipulation, the endorser guarantees acceptance and payment. He may prohibit any further endorsement; in this case, he gives no guarantee to the persons to whom the bill is subsequently endorsed.

Article 16

The possessor of a bill of exchange is deemed to be the lawful holder if he establishes his title to the bill through an uninterrupted series of endorsements, even if the last endorsement is in blank. In this connection, cancelled endorsements are deemed not to be written (non Šcrits). When an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to have acquired the bill by the endorsement in blank.

Where a person has been dispossessed of a bill of exchange, in any manner whatsoever, the holder who establishes his right thereto in the manner mentioned in the preceding paragraph is not bound to give up the bill unless he has acquired it in bad faith, or unless in acquiring it he has been guilty of gross negligence.

Article 17

Persons sued on a bill of exchange cannot set up against the holder defences founded on their personal relations with the drawer or with previous holders, unless the holder, in acquiring the bill, has knowingly acted to the detriment of the debtor.

Article 18

When an endorsement contains the statements 'value in collection' ('valeur en recouvrement'), 'for collection' ('pour encaissement'), 'by procuration' ('par procuration') or any other phrase implying a simple mandate, the holder may exercise all rights arising out of the bill of exchange, but he can only endorse it in his capacity as agent.

In this case, the parties liable can only set up against the holder defences which could be set up against the endorser.

The mandate contained in an endorsement by procuration does not terminate by reason of the death of the party giving the mandate or by reason of his becoming legally incapable.

Article 19

When an endorsement contains the statements 'value in security' ('valeur en

garantie'), 'value in pledge' ('valeur en gage'), or any other statement implying a pledge, the holder may exercise all the rights arising out of the bill of exchange, but an endorsement by him has the effects only of an endorsement by an agent.

The parties liable cannot set up against the holder defences founded on their personal relations with the endorser, unless the holder, in receiving the bill, has knowingly acted to the detriment of the debtor.

Article 20

An endorsement after maturity has the same effects as an endorsement before maturity. Nevertheless an endorsement after protest for non-payment, or after the expiration of the limit of time fixed for drawing up the protest, operates only as an ordinary assignment.

Failing proof to the contrary, an endorsement without date is deemed to have been placed on the bill before the expiration of the limit of time fixed for drawing up the protest.

CHAPTER III. - Acceptance

Article 21

Until maturity, a bill of exchange may be

presented to the drawee for acceptance at his domicile. either by the holder or by a person who is merely in possession of the bill.

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Article 22

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In any bill of exchange, the drawer may stipulate that it shall be presented for acceptance with or without fixing a limit of time for presentment.

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Except in the case of a bill payable at the address of a third party or in a locality other than that of the domicile of the drawee, or, except in the case of a bill drawn payable at a fixed period after sight, the drawer may prohibit presentment for acceptance.

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He may also stipulate that presentment for acceptance shall not take place before a named date.

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Unless the drawer has prohibited acceptance, every endorser may stipulate that the bill shall be presented for acceptance, with or without fixing a limit of time for presentment.

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Article 23

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Bills of exchange payable at a fixed period after sight must be presented for acceptance within one year of their date. The drawer may abridge or extend this period. These periods may

be abridged by the endorsers.

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Article 24

80

The drawee may demand that a bill shall be presented to him a second time on the day after the first presentment. Parties interested are not allowed to set up that this demand has not been complied with unless this request is mentioned in the protest.

81

The holder is not obliged to surrender to the drawee a bill presented for acceptance.

82

Article 25

83

An acceptance is written on the bill of exchange. It is expressed by the word 'accepted' or any other equivalent term. It is signed by the drawee. The simple signature of the drawee on the face of the bill constitutes an acceptance.

84

When the bill is payable at a certain time after sight, or when it must be presented for acceptance within a certain limit of time in accordance with a special stipulation the acceptance must be dated as of the day when the acceptance is given unless the holder requires it shall be dated as of the day of presentment. If it is undated, the holder, in order to preserve his right of recourse against the endorsers and the drawer, must authenticate the omission by a

protest drawn up within the proper time.

85

Article 26

An acceptance is unconditional, but the drawee may restrict it to part of the sum payable. Every other modification introduced by an acceptance into the tenor of the bill of exchange operates as a refusal to accept. Nevertheless, the acceptor is bound according to the terms of his acceptance.

86

Article 27

When the drawer of a bill has indicated a place of payment other than the domicile of the drawee without specifying a third party at whose address payment must be made, the drawee may name such third party at the time of acceptance. In default of this indication, the acceptor is deemed to have undertaken to pay the bill himself at the place of payment.

87

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If a bill is payable at the domicile of the drawee, the latter may in his acceptance indicate an address in the same place where payment is to be made.

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Article 28

By accepting, the drawee undertakes to pay the bill of exchange at its maturity. In default of payment, the holder, even if he is the drawer,

90

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has a direct action on the bill of exchange against the acceptor for all that can be demanded in accordance with Articles 48 and 49.

92

Article 29

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Where the drawee who has put his acceptance on a bill has cancelled it before restoring the bill, acceptance is deemed to be refused. Failing proof to the contrary, the cancellation is deemed to have taken place before the bill was restored.

94

Nevertheless, if the drawee has notified his acceptance in writing to the holder or to any party who has signed the bill, he is liable to such parties according to the terms of his acceptance.

95

CHAPTER IV. - 'Avals'

96

Article 30

97

Payment of a bill of exchange may be guaranteed by an 'aval' as to the whole or part of its amount.

98

This guarantee may be given by a third person or even by a person who has signed as a party to the bill.

99

Article 31

100

The 'aval' is given either on the bill itself

or on an 'allonge'.

It is expressed by the words 'good as aval'('bon pour aval') or by any other equivalent formula. It is signed by the giver of the 'aval'.

It is deemed to be constituted by the mere signature of the giver of the 'aval' placed on the face of the bill, except in the case of the signature of the drawee or of the drawer.

An 'aval' must specify for whose account it is given. In default of this it is deemed to be given for the drawer.

Article 32

The giver of an 'aval' is bound in the same manner as the person for whom he has become guarantor.

His undertaking is valid even when the liability which he has guaranteed is inoperative for any reason other than defect of form.

He has, when he pays a bill of exchange, the rights arising out of the bill of exchange against the person guaranteed and against those who are liable to the latter on the bill of exchange.

CHAPTER V. - Maturity

Article 33

A bill of exchange may be drawn payable:

110

At sight;

111

At a fixed period after sight;

112

At a fixed period after date;

113

At a fixed date.

114

Bills of exchange at other maturities or payable by instalments are null and void.

115

116

Article 34

A bill of exchange at sight is payable on presentment. It must be presented for payment within a year of its date. The drawer may abridge or extend this period. These periods may be abridged by the endorsers.

117

The drawer may prescribe that a bill of exchange payable at sight must not be presented for payment before a named date. In this case, the period for presentation begins from the said date.

118

119

Article 35

The maturity of a bill of exchange payable at a fixed period after sight is determined either by the date of the acceptance or by the date of the protest.

120

In the absence of the protest, an undated acceptance is deemed, so far as regards the acceptor, to have been given on the last day of the limit of time for presentment for acceptance.

121

Article 36

122

Where a bill of exchange is drawn at one or more months after date or after sight, the bill matures on the corresponding date of the month when payment must be made. If there be no corresponding date, the bill matures on the last day of this month.

123

When a bill of exchange is drawn at one or more months and a-half after date or sight, entire months must first be calculated.

124

If the maturity is fixed at the commencement, in the middle (mid-January or mid-February, etc.,) or at the end of the month, the first, fifteenth or last day of the month is to be understood.

125

The expressions 'eight days' or 'fifteen days' indicate not one or two weeks, but a period of eight or fifteen actual days.

126

The expression 'half-month' means a period of fifteen days.

127

Article 37

128

When a bill of exchange is payable on a fixed day in a place where the calendar is different from the calendar in the place of issue, the day of maturity is deemed to be fixed according to the calendar of the place of payment.

When a bill of exchange drawn between two places having different calendars is payable at a fixed period after date, the day of issue is referred to the corresponding day of the calendar in the place of payment, and the maturity is fixed accordingly.

The time for presenting bills of exchange is calculated in accordance with the rules of the preceding paragraph.

These rules do not apply if a stipulation in the bill or even the simple terms of the instrument indicate an intention to adopt some different rule.

Bills of exchange at other maturities or payable by instalments are null and void.

CHAPTER VI. - Payment

Article 38

The holder of a bill of exchange payable on a fixed day or at a fixed period after date or

after sight must present the bill for payment either on the day on which it is payable or on one of the two business days which follow.

The presentment of a bill of exchange at a clearing-house is equivalent to a presentment for payment.

Article 39

The drawee who pays a bill of exchange may require that it shall be given up to him receipted by the holder.

The holder may not refuse partial payment.

In case of partial payment the drawee may require that mention of this payment shall be made on the bill, and that a receipt therefor shall be given to him.

Article 40

The holder of a bill of exchange cannot be compelled to receive a payment thereof before maturity.

The drawee who pays before maturity does so at his own risk and peril. He who pays at maturity is validly discharged, unless he has been guilty of fraud or gross negligence. He is bound to verify the regularity of the series of

endorsements, but not the signature of the endorsers.

145

Article 41

146

When a bill of exchange is drawn payable in a currency which is not that of the place of payment, the sum payable may be paid in the currency of the country, according to its value on the date of maturity. If the debtor is in default, the holder may at his option demand that the amount of the bill be paid in the currency of the country according to the rate on the day of maturity or the day of payment.

147

The usages of the place of payment determine the value of foreign currency. Nevertheless, the drawer may stipulate that the sum payable shall be calculated according to a rate expressed in the bill.

148

The foregoing rules shall not apply to the case in which the drawer has stipulated that payment must be made in a certain specified currency (stipulation for effective payment in foreign currency).

149

If the amount of the bill of exchange is specified in a currency having the same denomination, but a different value in the country of issue and the country of payment, reference is deemed to be made to the currency

of the place of payment.

150

Article 42

151

When a bill of exchange is not presented for payment within the limit of time fixed by Article 38, every debtor is authorised to deposit the amount with the competent authority at the charge, risk and peril of the holder.

152

CHAPTER VII. - Recourse for Non-Acceptance or Non-Payment

153

Article 43

154

The holder may exercise his right of recourse against the endorsers, the drawer and the other parties liable:

155

At maturity:

156

If payment has not been made;

157

Even before maturity;

158

1. If there has been total or partial refusal to accept;

159

2. In the event of the bankruptcy (faillite) of the drawee, whether he has accepted or not, or in the event of a stoppage of payment on his part, even when not declared by a judgement, or when execution has been levied against his goods without result;

3. In the event of the bankruptcy (faillite)
of the drawer of a non-acceptable bill.

Article 44

Default of acceptance or on payment
must be evidenced by an authentic act (protest
for non-acceptance or non-payment).

Protest for non-acceptance must be made
within the limit of time fixed for presentment for
acceptance. If in the case contemplated by
Article 24, paragraph 1, the first presentment
takes place on the last day of that time, the
protest may nevertheless be drawn up on the
next day.

Protest for non-payment of a bill of
exchange payable on a fixed day or at a fixed
period after date or sight must be made on one
of the two business days following the day on
which the bill is payable. In the case of a bill
payable at sight, the protest must be drawn up
under the conditions specified in the foregoing
paragraph for the drawing up of a protest for
non-acceptance.

Protest for non-acceptance dispenses with
presentment for payment and protest for non-
payment.

If there is a stoppage of payment on the

part of the drawee, whether he has accepted or not, or if execution has been levied against his goods without result, the holder cannot exercise his right of recourse until after presentment of the bill to the drawee for payment and after the protest has been drawn up.

167

If the drawee, whether he accepted or not, is declared bankrupt (faillite dŠclarŠe), or in the event of the declared bankruptcy of the drawer of a non-acceptable bill, the production of the judgement declaring the bankruptcy suffices to enable the holder to exercise his right of recourse.

168

Article 45

169

The holder must give notice of non-acceptance or non-payment to his endorser and to the drawer within the four business days which follow the day for protest or, in case of a stipulation 'retour sans frais', the day for presentment. Every endorser must, within the two business days following the day on which he receives notice, notify his endorser of the notice he has received, mentioning the names and addresses of those who have given the previous notices, and so on through the series until the drawer is reached. The periods mentioned above run from the receipt of the preceding notice.

When, in conformity with the preceding paragraph, notice is given to a person who has signed a bill of exchange, the same notice must be given within the same limit of time to his avaliseur.

Where an endorser either has not specified his address or has specified it in an illegible manner, it is sufficient that notice should be given to the preceding endorser.

A person who must give notice may give it in any form whatever, even by simply returning the bill of exchange.

He must prove that he has given notice within the time allowed. This time-limit shall be regarded as having been observed if a letter giving the notice has been posted within the prescribed time.

A person who does not give notice within the limit of time mentioned above does not forfeit his rights. He is responsible for the injury, if any, caused by his negligence, but the damages shall not exceed the amount of the bill of exchange.

Article 46

The drawer, an endorser, or a person guaranteeing payment by aval (avaliseur) may,

by the stipulation 'retour sans frais', 'sans protêt', or any other equivalent expression written on the instrument and signed, release the holder from having a protest of non-acceptance or non-payment drawn up in order to exercise his right of recourse.

177

This stipulation does not release the holder from presenting the bill within the prescribed time, or from the notices he has to give. The burden of proving the non-observance of the limits of time lies on the person who seeks to set it up against the holder.

178

If the stipulation is written by the drawer, it is operative in respect of all persons who have signed the bill; if it is written by an endorser or an avaliseur, it is operative only in respect of such endorser or avaliseur. If, in spite of the stipulation written by the drawer, the holder has the protest drawn up, he must bear the expenses thereof. When the stipulation emanates from an endorser or avaliseur, the costs of the protest, if one is drawn up, may be recovered from all the persons who have signed the bill.

179

Article 47

180

All drawers, acceptors, endorsers or guarantors by aval of a bill of exchange are

jointly and severally liable to the holder. The holder has the right of proceeding against all these persons individually or collectively without being required to observe the order in which they have become bound.

The same right is possessed by any person signing the bill who has taken it up and paid it.

Proceedings against one of the parties liable do not prevent proceedings against the others, even though they may be subsequent to the party first proceeded against.

Article 48

The holder may recover from the person against whom he exercises his right of recourse:

1. The amount of the unaccepted or unpaid bill of exchange with interest, if interest has been stipulated for;

2. Interest at the rate of 6 per cent from the date of maturity;

3. The expenses of protest and of the notices given as well as other expenses.

If the right of recourse is exercised before maturity, the amount of the bill shall be subject to a discount. This discount shall be calculated

according to the official rate of discount (bank-rate) ruling on the date when recourse is exercised at the place of domicile of the holder.

189

Article 49

190

A party who takes up and pays a bill of exchange can recover from the parties liable to him:

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1. The entire sum which he has paid;

192

2. Interest on the said sum calculated at the rate of 6 per cent, starting from the day when he made payment

193

3. Any expenses which he has incurred.

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Article 50

195

Every party liable against whom a right of recourse is or may be exercised, can require against payment, that the bill shall be given up to him with the protest and a receipted account.

196

Every endorser who has taken up and paid a bill of exchange may cancel his own endorsement and those of subsequent endorsers.

197

Article 51

198

In the case of the exercise of the right of recourse after a partial acceptance, the party

who pays the sum in respect of which the bill has not been accepted can require that this payment shall be specified on the bill and that he shall be given a receipt therefor. The holder must also give him a certified copy of the bill, together with the protest, in order to enable subsequent recourse to be exercised.

199

Article 52

200

Every person having the right of recourse may, in the absence of agreement to the contrary, reimburse himself by means of a fresh bill (redraft) to be drawn at sight on one of the parties liable to him and payable at the domicile of that party.

201

The redraft includes, in addition to the sums mentioned in Articles 48 and 49, brokerage and the cost of stamping the redraft.

202

If the redraft is drawn by the holder, the sum payable is fixed according to the rate for a sight bill drawn at the place where the original bill was payable upon the party liable at the place of his domicile. If the redraft is drawn by an endorser, the sum payable is fixed according to the rate for a sight bill drawn at the place where the drawer of the redraft is domiciled upon the place of domicile of the party liable.

Article 53

After the expiration of the limits of time fixed:

For the presentment of a bill of exchange drawn at sight or at a fixed period after sight;

For drawing up the protest for non-acceptance or non-payment;

For presentment for payment in the case of a stipulation retour sans frais, the holder loses his rights of recourse against the endorsers, against the drawer and against the other parties liable, with the exception of the acceptor.

In default of presentment for acceptance within the limit of time stipulated by the drawer, the holder loses his right of recourse for non-payment, as well as for non-acceptance, unless it appears from the terms of the stipulation that the drawer only meant to release himself from the guarantee of acceptance.

If the stipulation for a limit of time for presentment is contained in an endorsement, the endorser alone can avail himself of it.

Article 54

Should the presentment of the bill of exchange or the drawing up of the protest within

the prescribed limits of time be prevented by an insurmountable obstacle (legal prohibition (prescription IŠgale) by any State or other case of vis major), these limits of time shall be extended. The holder is bound to give notice without delay of the case of vis major to his endorser and to specify this notice, which he must date and sign, on the bill or on an allonge; in other respects the provisions of Article 45 shall apply.

212

When vis major has terminated the holder must without delay present the bill of exchange for acceptance or payment and, if need be, draw up the protest. If vis major continues to operate beyond thirty days after maturity, recourse may be exercised, and neither presentment nor the drawing up of a protest shall be necessary.

213

In the case of bills of exchange drawn at sight or at a fixed period after sight, the time-limit of thirty days shall run from the date on which the holder, even before the expiration of the time for presentment, has given notice of vis major to his endorser. In the case of bill of exchange drawn at a certain time after sight, the above time-limit of thirty days shall be added to the period after sight specified in the bill of exchange.

Facts which are purely personal to the holder or to the person whom he has entrusted with the presentment of the bill or drawing up of the bill or drawing up of the protest are not deemed to constitute cases of vis major.

214

215

CHAPTER VIII. - Intervention for Honour

216

I. General Provisions

217

Article 55

218

The drawer, an endorser, or a person giving an aval may specify a person who is to accept or pay in case of need.

219

A bill of exchange may, subject as hereinafter mentioned, be accepted or paid by a person who intervenes for the honour of any debtor against whom a right of recourse exists.

220

The person intervening may be a third party, even the drawee, or, save the acceptor, a party already liable on the bill of exchange.

221

The person intervening is bound to give, within two business days, notice of his intervention to the party for whose honour he has intervened. In default, he is responsible for the injury, if any, due to his negligence, but the

damages shall not exceed the amount of the bill of exchange.

222

2. Acceptance By Intervention (For Honour)

223

Article 56

224

There may be acceptance by intervention in all cases where the holder has a right of recourse before maturity on a bill which is capable of acceptance.

225

When the bill of exchange indicates a person who is designated to accept or pay it in case of need at the place of payment, the holder may not exercise his rights of recourse before maturity against the person naming such referee in case of need and against subsequent signatories, unless he has presented the bill of exchange to the referee in case of need and until, if acceptance is refused by the latter, this refusal has been authenticated by a protest.

226

In other cases of intervention the holder may refuse an acceptance by intervention. Nevertheless, if he allows it, he loses his right of recourse before maturity against the person on whose behalf such acceptance was given and against subsequent signatories.

Article 57

Acceptance by intervention is specified on the bill of exchange. It is signed by the person intervening. It mentions the person for whose honour it has been given and, in default of such mention, the acceptance is deemed to have been given for the honour of the drawer.

Article 58

The acceptor by intervention is liable to the holder and to the endorsers subsequent to the party for whose honour he intervened, in the same manner as such party.

Notwithstanding an acceptance by intervention, the party for whose honour it has been given and the parties liable to him may require the holder, in exchange for payment of the sum mentioned in Article 48, to deliver the bill, the protest, and a receipted account, if any.

3. Payment by Intervention**Article 59**

Payment by intervention may take place in all cases where, either at maturity or before maturity, the holder has a right of recourse on the bill.

Payment must include the whole amount payable by the party for whose honour it is made.

235

It must be made at the latest on the day following the last day allowed for drawing up the protest for non-payment.

236

Article 60

237

If a bill of exchange has been accepted by persons intervening who are domiciled in the place of payment, or if persons domiciled therein have been named as referees in case of need, the holder must present the bill to all these persons and, if necessary, have a protest for non-payment drawn up at latest on the day following the last day allowed for drawing up the protest.

238

In default of protest within this limit of time, the party who has named the referee in case of need, or for whose account the bill has been accepted, and the subsequent endorsers are discharged.

239

Article 61

240

The holder who refuses payment by intervention loses his right of recourse against any persons who would have been discharged thereby.

241

Article 62

Payment by intervention must be authenticated by a receipt given on the bill of exchange mentioning the person for whose honour payment has been made. In default of such mention, payment is deemed to have been made for the honour of the drawer.

The bill of exchange and the protest, if any, must be given up to the person paying by intervention.

Article 63

The person paying by intervention acquires the rights arising out of the bill of exchange against the party for whose honour he has paid and against persons who are liable to the latter on the bill of exchange. Nevertheless, he cannot re-endorse the bill of exchange.

Endorsers subsequent to the party for whose honour payment has been made are discharged.

In case of competition for payment by intervention, the payment which effects the greater number of releases has the preference. Any person who, with a knowledge of the facts, intervenes in a manner contrary to this rule, loses his right of recourse against those who

would have been discharged.

249

CHAPTER IX. - Parts of A Set, and Copies

250

I. Parts of A Set

251

Article 64

252

A bill of exchange can be drawn in a set of two or more identical parts. These parts must be numbered in the body of the instrument itself; in default, each part is considered as a separate bill of exchange.

253

Every holder of a bill which does not specify that it has been drawn as a sole bill may, at his own expense, require the delivery of two or more parts. For this purpose he must apply to his immediate endorser, who is bound to assist him in proceeding against his own endorser, and so on in the series until the drawer is reached. The endorsers are bound to reproduce their endorsements on the new parts of the set.

254

Article 65

255

Payment made on one part of a set operates as a discharge, even though there is no stipulation that this payment annuls the effect on the other parts. Nevertheless, the drawee is

liable on each accepted part which he has not recovered.

An endorser who has transferred parts of a set to different persons, as well as subsequent endorsers, are liable on all the parts bearing their signature which have not been restored.

Article 66

A party who has sent one part for acceptance must indicate on the other parts the name of the person in whose hands this part is to be found. That person is bound to give it up to the lawful holder of another part.

If he refuses, the holder cannot exercise his right of recourse until he has had a protest drawn up specifying:

1. That the part sent for acceptance has not been given up to him on demand;

2. that acceptance or payment could not be obtained on another of parts.

2. Copies

Article 67

Every holder of a bill of exchange has the right to make copies of it. A copy must reproduce the original exactly, with the

endorsements and all other statements to be found therein. It must specify where the copy ends. It may be endorsed and guaranteed by aval in the same manner and with the same effects as the original.

265

Article 68

266

A copy must specify the person in possession of the original instrument. The latter is bound to hand over the said instrument to the lawful holder of the copy.

267

If he refuses, the holder may not exercise his right of recourse against the persons who have endorsed the copy or guaranteed it by aval until he has had a protest drawn up specifying that the original has not been given up to him on his demand.

268

Where the original instrument, after the last endorsement before the making of the copy contains a clause 'commencing from here an endorsement is only valid if made on the copy' or some equivalent formula, a subsequent endorsement on the original is null and void.

269

CHAPTER X. - Alterations

270

Article 69

271

In case of alteration of the text of a bill of

exchange, parties who have signed subsequent to the alteration are bound according to the terms of the altered text; parties who have signed before the alteration are bound according to the terms of the original text.

272

CHAPTER XI. - Limitation of Actions

273

Article 70

274

All actions arising out of a bill of exchange against the acceptor are barred after three years, reckoned from the date of maturity.

275

Actions by the holder against the endorsers and against the drawer are barred after one year from the date of a protest drawn up within proper time, or from the date of maturity where there is a stipulation retour sans frais.

276

Actions by endorsers against each other and against the drawer are barred after six months, reckoned from the day when the endorser took up and paid the bill or from the day when he himself was sued.

277

Article 71

278

Interruption of the period of limitation is only effective against the person in respect of whom the period has been interrupted.

CHAPTER XII. - General Provisions

Article 72

Payment of a bill of exchange which falls due on a legal holiday (jour fŠriŠ IŠgal) cannot be demanded until the next business day. So, too, all other proceedings relating to a bill of exchange, in particular presentment for acceptance and protest, can only be taken on a business day.

Where any of these proceedings must be taken within a certain limit of time the last day of which is a legal holiday (jour fŠriŠ IŠgal), the limit of time is extended until the first business day which follows the expiration of that time. Intermediate holidays (jours fŠriŠs) are included in computing limits of time.

Article 73

Legal or contractual limits of time do not include the day on which the period commences.

Article 74

No days of grace, whether legal or judicial, are permitted.

TITLE II - Promissory Notes

Article 75

A promissory note contains:

1. The term 'promissory note' inserted in the body of the instrument and expressed in the language employed in drawing up the instrument;

2. An unconditional promise to pay a determinate sum of money;

3. A statement of the time of payment

4. A statement of the place where payment is to be made

5. The name of the person to whom or to whose order payment is to be made;

6. A statement of the date and of the place where the promissory note is issued;

7. The signature of the person who issues the instrument (maker).

Article 76

An instrument in which any of the requirements mentioned in the preceding Article are wanting is invalid as a promissory note except in the cases specified in the following paragraphs.

A promissory note in which the time of

payment is not specified is deemed to be payable at sight.

In default of special mention, the place where the instrument is made is deemed to be the place of payment and at the same time the place of the domicile of the maker.

A promissory note which does not mention the place of its issue is deemed to have been made in the place mentioned beside the name of the maker.

Article 77

The following provisions relating to bills of exchange apply to promissory notes so far as they are not inconsistent with the nature of these instruments, viz:

Endorsement (Article 11 to 20);

Time of payment (Articles 33 to 37);

Payment (Articles 38 to 42);

Recourse in case of non-payment (Articles 43 to 50, 52 to 54);

Payment by intervention (Articles 55, 59 to 63);

Copies (Articles 67 and 68);

Alterations (Article 69);

Limitation of actions (Articles 70 and 71);

311

Holidays, computation of limits of time
and prohibition of days of grace (Articles 72, 73
and 74).

312

The following provisions are also
applicable to a promissory note: The provisions
concerning a bill of exchange payable at the
address of a third party or in a locality other
than that of the domicile of the drawee (Articles
4 and 27); stipulation for interest (Article 5);
discrepancies as regards the sum payable
(Article 6); the consequences of signature under
the conditions mentioned in Article 7, the
consequences of signature by a person who acts
without authority or who exceeds his authority
(Article 8); and provisions concerning a bill of
exchange in blank (Article 10).

313

The following provisions are also
applicable to a promissory note: Provisions
relating to guarantee by aval (Articles 30-32); in
the case provided for in Article 31, last
paragraph, if the aval does not specify on whose
behalf it has been given, it is deemed to have
been given on behalf of the maker of the
promissory note.

314

Article 78

315

The maker of a promissory note is bound in the same manner as an acceptor of a bill of exchange.

Promissory notes payable at a certain time after sight must be presented for the visa of the maker within the limits of time fixed by Article 23. The limit of time runs from the date of which marks the commencement of the period of time after sight.

ANNEX II - Articles 1-23 [OMITTED].

Endnotes

Document Information

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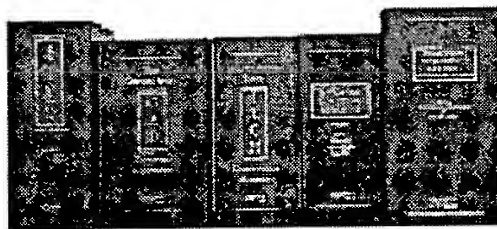
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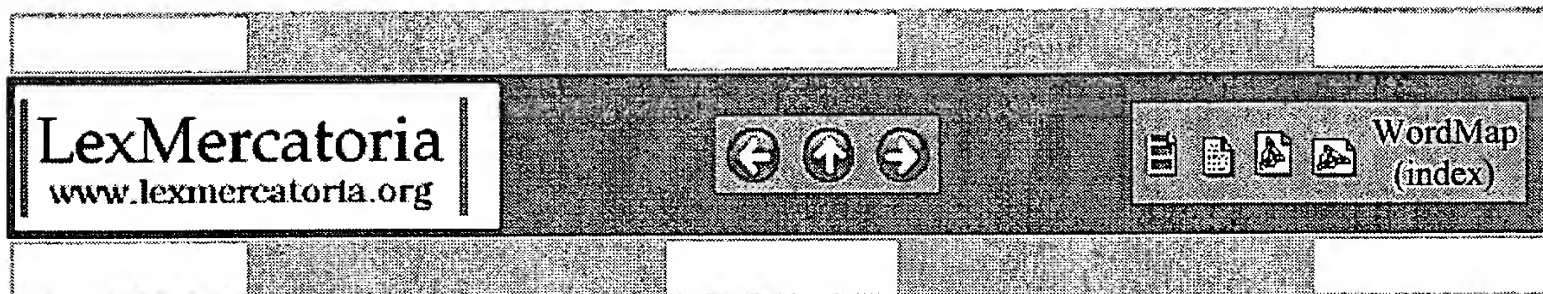
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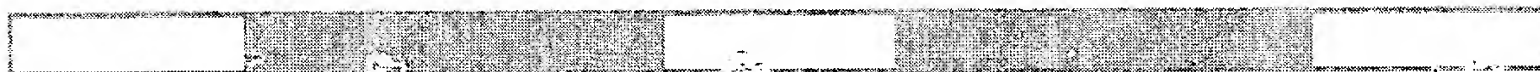
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III. Chronological Table of Actions in Respect of UNCITRAL Conventions

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January

1991

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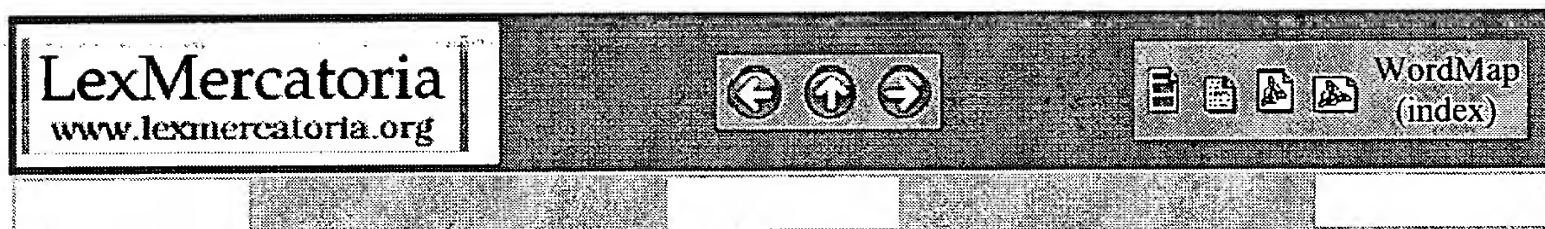
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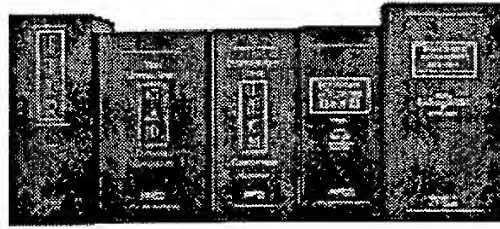
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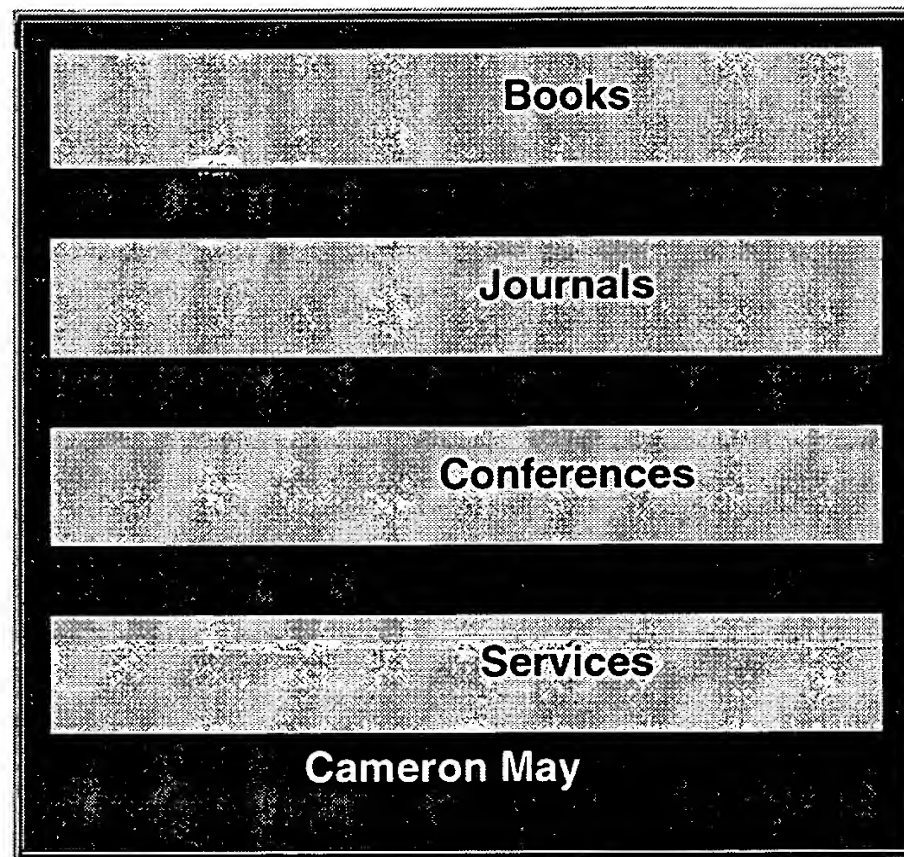
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Incoterms 1990 - International Commercial TERMS

E-terms

F-terms

C-terms

D-terms

Incoterms 1990 CFR, "mirrored" correlative obligations of buyer and seller.

Grouped under the following 10 heads.

The 13 Incoterms

Group E: *Departure term.*

EXW - EX WORKS (... named place)

Group F: *Shipment terms - Main carriage unpaid.*

FCA - FREE CARRIER (... named place)

FAS - FREE ALONGSIDE SHIP (... named port of shipment)

FOB - FREE ON BOARD (... named port of shipment)

Group C: *Shipment terms - Main carriage paid.*

CFR - COST AND FREIGHT (... named port of destination)

CIF - COST, INSURANCE AND FREIGHT (... named port of destination)

CPT - CARRIAGE PAID TO (... named place of destination)

CIP - CARRIAGE AND INSURANCE PAID TO (... named place of destination)

Group D: *Arrival Terms.*

DAF - DELIVERED AT FRONTIER (... named place)

DES - DELIVERED EX SHIP (... named port of destination)

DEQ - DELIVERED EX QUAY (DUTY PAID) (... named port of destination)

DDU - DELIVERED DUTY UNPAID (... named place of destination)

DDP - DELIVERED Duty PAID (... named place of destination)

Mode of Transport and the Appropriate Incoterm 1990

Suitable for Any Mode of Transport including Multimodal:

Suitable for Air Transport:

Obtaining Incoterms

Document Information

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Word Map (index)

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Incoterms 1990 - International Commercial TERMS

Incoterms 1990 are divided into four basic groups.

2

Trade Terms defined by Incoterms:

3

4

E-terms

Group E: *Departure term*. Where the seller makes the goods available to the buyer at the seller's own premises, (EXW).

5

EXW - Ex Works

6

7

F-terms

Group F: *Shipment terms - Main carriage*

8

unpaid. Where the seller is called on to deliver the goods to a carrier named by the buyer, (FCA, FAS and FOB). These are shipment contracts with the shipment point named, and carriage unpaid by the seller.

FCA - Free Carrier

9

FAS - Free Alongside Ship

10

FOB- Free On Board

11

12

C-terms

Group C: *Shipment terms - Main carriage paid*. Where the seller has to contract for carriage, but without assuming the risk of loss of or damage to the goods or additional costs due to events occurring after shipment and dispatch, (CFR, CIF, CPT and CIP). These are shipment contracts with the destination point named, and carriage paid by the seller. There are two critical division points, one for the division of costs, the other for the division of risk. Costs being assumed by the seller until the destination point; risk being transferred to the buyer at the point of shipment. CIF and CIP are the only Incoterms related directly to insurance cover. In these the seller arranges the contract of carriage and payment of freight and is regarded as being in a better position than the buyer to arrange

13

insurance.

CFR - Cost and Freight 14

CIF - Cost, Insurance and Freight 15

CPT - Carriage Paid To 16

CIP - Carriage and Insurance Paid To 17

18

D-terms

Group D: *Arrival Terms*. Where the seller has to bear all costs and risk needed to bring the goods to the country of destination, (DAF, DES, DEQ, DDU and DDP). These are arrival contracts. 19

DAF - Delivered At Frontier 20

DES - Delivered Ex Ship 21

DEQ - Delivered Ex Quay 22

DDU - Delivered Duty Unpaid 23

DDP - Delivered Duty Paid 24

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Incoterms 1990 CFR, "mirrored" correlative obligations of buyer and seller.

Grouped under the following 10 heads.

Under Incoterms 1990 all obligations related to a given trade term are grouped under 10 headings, with the obligations

for the seller and buyer under each heading stated and mirrored with respect to the same subject matter.

A	The Seller Must	B	The Buyer Must
A1	Provision of Goods in Conformity with the Contract	B1	Payment of the Price
A2	Licences, Authorisations and Formalities	B2	Licences, Authorisations and Formalities
A3	Contract of Carriage and Insurance (a) Contract of carriage (b) Contract of insurance	B3	Contract of Carriage
A4	Delivery	B4	Taking Delivery
A5	Transfer of Risks	B5	Transfer of Risks
A6	Division of Costs	B6	Division of Costs
A7	Notice to the Buyer	B7	Notice to the Seller
A8	Proof of Delivery, Transport Document or Equivalent Electronic Message	B8	Proof of Delivery, Transport Document or Equivalent Electronic Message
A9	Checking - Packaging - Marking	B9	Inspection of Goods
A10	Other Obligations	B10	Other Obligations

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The 13 Incoterms

The 13 terms are grouped into four basically different categories:

27

Group E: *Departure term.*

Where the seller makes the goods available to the buyer at the seller's own premises, (**EXW**).

29

EXW - EX WORKS (... named place)

"Ex works" means that the seller fulfils his obligation to deliver when he has made the goods available at his premises (i.e. works, factory, warehouse, etc.) to the buyer. In particular, he is not responsible for loading the goods on the vehicle provided by the buyer or for clearing the goods for export, unless otherwise agreed. The buyer bears all costs and risks involved in taking the goods from the seller's premises to the desired destination. This term thus represents the minimum obligation for the seller. This term should not be used when the buyer cannot carry out directly or indirectly the export formalities. In such circumstances, the FCA term should be used.

Group F: *Shipment terms - Main carriage unpaid.*

Where the seller is called on to deliver the goods to a carrier named by the buyer, (**FCA, FAS and FOB**). These are **shipment contracts with the shipment point named, and carriage unpaid by the seller.**

FCA - FREE CARRIER (... named place)

"Free Carrier" means that the seller fulfils his obligation to deliver when he has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose within the place or range stipulated where the carrier shall take the goods into his charge. When, according to commercial practice, the seller's assistance is required in making the contract with the carrier (such as in rail or air transport) the seller may act at the buyer's risk and expense.

This term may be used for any mode of transport, including multimodal transport.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of carriage by rail, road, sea, air, inland waterway or by a combination of such modes. If the buyer instructs the seller to deliver the cargo to a person, e.g. a freight forwarder who is not a "carrier", the seller is deemed to have fulfilled his obligation to deliver the goods when they are in the custody of that person.

"Transport terminal", means a railway terminal, a freight station, a container terminal or yard, a multi-purpose cargo terminal or any

similar receiving point.

"Container" includes any equipment used to unitise cargo, e.g. all types of containers and/or flats, whether ISO accepted or not, trailers, swap bodies, ro-ro equipment, igloos, and applies to all modes of transport.

Under Incoterms 1990 all obligations related to a given trade term are grouped under 10 headings, with the obligations for the seller and buyer under each heading stated and mirrored with respect to the same subject matter.

FAS - FREE ALONGSIDE SHIP (... named port of shipment)

"Free Alongside Ship" means that the seller fulfils his obligation to deliver when the goods have been placed alongside the vessel on the quay or in lighters at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment. The FAS term requires the buyer to clear the goods for export. It should not be used when the buyer cannot carry out directly or indirectly the export formalities.

This term can only be used for sea or inland waterway transport.

FOB - FREE ON BOARD (... named port of shipment)

"Free on Board" means that the seller fulfils his obligation to deliver when the goods have passed over the ship's rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point.

The FOB term requires the seller to clear the goods for export.

This term can only be used for sea or inland waterway transport. When the ship's rail serves no practical purpose, such as in the case of roll-on/roll-off or container traffic, the FCA term is more appropriate to use.

Group C: *Shipment terms - Main carriage paid.*

Where the seller has to contract for carriage, but without assuming the risk of loss of or damage to the goods or additional costs due to events occurring after shipment and dispatch, **(CFR, CIF CPT and CIP). These are shipment contracts with the destination point named, and carriage paid by the seller. There are two critical division points, one for the**

division of costs, the other for the division of risk. Costs being assumed by the seller until the destination point; risk being transferred to the buyer at the point of shipment. CIF and CIP are the only Incoterms related directly to insurance cover. In these the seller arranges the contract of carriage and payment of freight and is regarded as being in a better position than the buyer to arrange insurance.

50

CFR - COST AND FREIGHT (... named port of destination)

"Cost and Freight" means that the seller must pay the costs and freight necessary to bring the goods to the named port of destination but the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered on board the vessel, is transferred from the seller to the buyer when the goods pass the ship's rail in the port of shipment.

51

The CFR term requires the seller to clear the goods for export.

52

This term can only be used for sea and inland waterway transport. When the ship's rail serves no practical purpose, such as in the case

53

of roll-on/roll-off or container traffic, the CPT term is more appropriate to use.

54

CIF - COST, INSURANCE AND FREIGHT (... named port of destination)

"Cost, Insurance and Freight" means that the seller has the same obligations as under CFR but with the addition that he has to procure marine insurance against the buyer's risk of loss of or damage to the goods during the carriage. The seller contracts for insurance and pays the insurance premium.

55

The buyer should note that under the CIF term the seller is only required to obtain insurance on minimum coverage. The CIF term requires the seller to clear the goods for export. This term can only be used for sea and inland waterway transport. When the ship's rail serves no practical purposes such as in the case of roll-on/ roll-off or container traffic, the CIP term is more appropriate to use.

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CPT- CARRIAGE PAID TO (... named place of destination)

"Carriage paid to..." means that the seller pays the freight for the carriage of the goods to

57

58

the named destination. The risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time the goods have been delivered to the carrier, is transferred from the seller to the buyer when the goods have been delivered into the custody of the carrier.

"Carrier" means any person who, in a contract of carriage, undertakes to perform or to procure the performance of carriage, by rail, road, sea, air, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CPT term requires the seller to clear the goods for export.

This term may be used for any mode of transport including multimodal transport.

CIP - CARRIAGE AND INSURANCE PAID TO (... named place of destination)

"Carriage and insurance paid to..." means that the seller has the same obligations as under CPT but with the addition that the seller has to

procure cargo insurance against the buyer's risk of loss of or damage to the goods during the carriage. The seller contracts for insurance and pays the insurance premium.

The buyer should note that under the CIP term the seller is only required to obtain insurance on minimum coverage. The CIP term requires the seller to clear the goods for export. This term may be used for any mode of transport including multimodal transport.

65

Group D: *Arrival Terms.*

66

Where the seller has to bear all costs and risk needed to bring the goods to the country of destination, (DAF, DES, DEQ, DDU and DDP). These are arrival contracts.

67

DAF - DELIVERED AT FRONTIER (... named place)

68

"Delivered at Frontier" means that the seller fulfils his obligation to deliver when the goods have been made available, cleared for export, at the named point and place at the frontier, but before the customs border of the adjoining country. The term "frontier" may be used for any frontier including that of the country of export. Therefore, it is of vital importance that

69

the frontier in question be defined precisely by always naming the point and place in the term.

The term is primarily intended to be used when goods are to be carried by rail or road, but it may be used for any mode of transport.

DES - DELIVERED EX SHIP (... named port of destination)

"Ex Ship" means that the seller fulfils his obligation to deliver when the goods have been made available to the buyer on board the ship uncleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named port of destination. This term can only be used for sea or inland waterway transport.

DEQ - DELIVERED EX QUAY (DUTY PAID) (... named port of destination)

"Delivered Ex Quay (duty paid)" means that the seller fulfils his obligation to deliver when he has made the goods available to the buyer on the quay (wharf) at the named port of destination, cleared for importation. The seller has to bear all risks and costs including duties, taxes and other charges of delivering the goods thereto.

This term should not be used if the seller is unable directly or indirectly to obtain the import licence.

75

If the parties wish the buyer to clear the goods for importation and pay the duty the words duty unpaid, should be used instead of "duty paid".

76

If the parties wish to exclude from the seller's obligations some of the costs payable upon importation of the goods (such as value added tax (VAT)), this should be made clear by adding words to this effect: "Delivered ex quay, VAT unpaid (... named port of destination)",.

77

This term can only be used for sea or inland waterway transport.

78

DDU - DELIVERED DUTY UNPAID (... named place of destination)

79

"Delivered duty unpaid" means that the seller fulfils his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the costs and risks involved in bringing the goods thereto (excluding duties, taxes and other official charges payable upon importation) as well as the costs and risks of carrying out customs formalities. The buyer has to pay any

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additional costs and to bear any risks caused by his failure to clear the goods for import in time.

If the parties wish the seller to carry out customs formalities and bear the costs and risks resulting therefrom, this has to be made clear by adding words to this effect.

If the parties wish to include in the seller's obligations some of the costs payable upon importation of the goods (such as value added tax (VAT)), this should be made clear by adding words to this effect: Delivered duty unpaid, VAT paid, (... named place of destination) ,

This term may be used irrespective of the mode of transport.

DDP - DELIVERED Duty PAID (... named place of destination)

"Delivered duty paid" means that the seller fulfils his obligation to deliver when the goods have been made available at the named place in the country of importation. The seller has to bear the risks and costs, including duties, taxes and other charges of delivering the goods thereto, cleared for importation. Whilst the DDU should be used.

If the parties wish to exclude from the

seller's obligations some of the costs payable upon importation of the goods (such as value added tax (VAT)), this should be made clear by adding words to this effect: "Delivered duty paid, VAT unpaid (...named place of destination)".

This term may be used irrespective of the mode of transport.

Mode of Transport and the Appropriate Incoterm 1990

Suitable for Any Mode of Transport including Multimodal:

EXW - Ex Works (... named place)

FCA - Free Carrier (... named place)

CPT - Carriage Paid To (... named place of destination)

CIP - Carriage and Insurance Paid To (... named place of destination)

DAF - Delivered At Frontier (... named place of destination)

DDU - Delivered Duty Unpaid (... named place of destination)

DDP - Delivered Duty Paid (... named place of destination)

Suitable for Air Transport:

FCA - Free Carrier (... named place)

Suitable for Rail Transport:

FCA - Free Carrier (... named place)

Suitable for Sea and Inland Waterway
Transport:

FAS - Free Alongside Ship (... named
port of shipment)

FOB - Free On Board (... named port of
shipment)

CFR - Cost and Freight (... named port of
destination)

CIF - Cost, Insurance and Freight (...
named port of destination)

DES - Delivered Ex Ship (... named port
of destination)

DEQ - Delivered Ex Quay (... named port
of destination)

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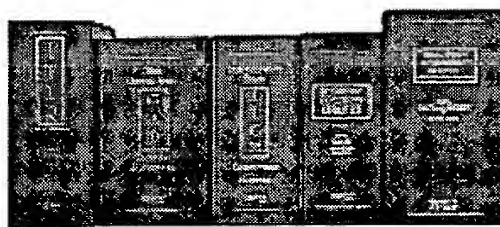
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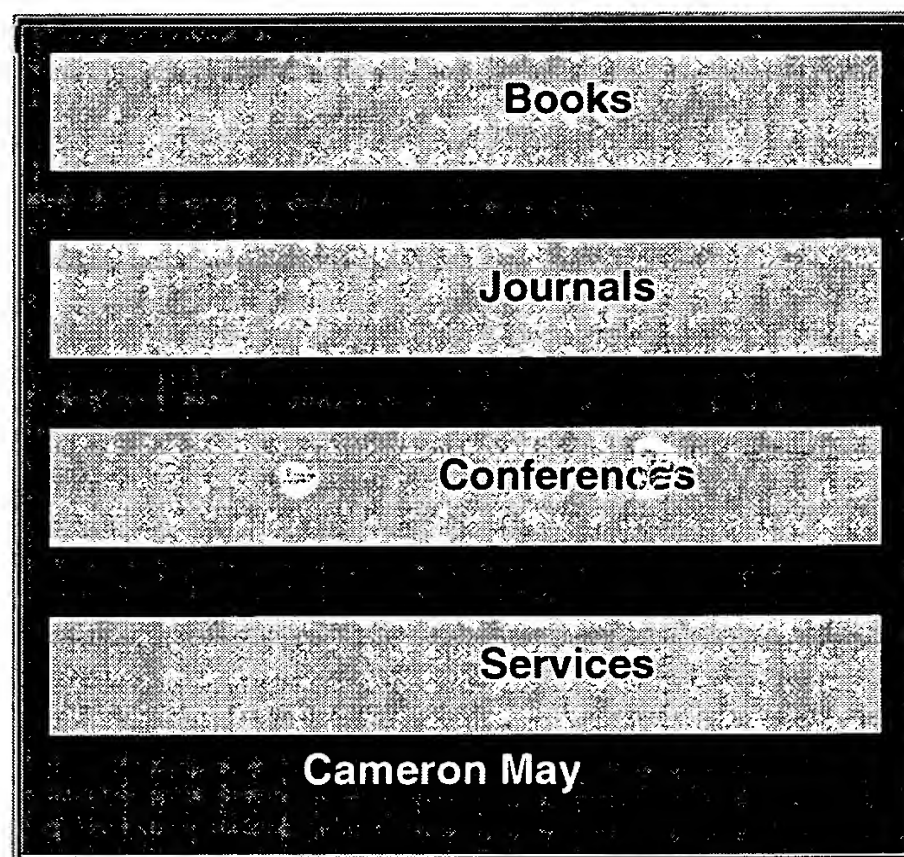
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
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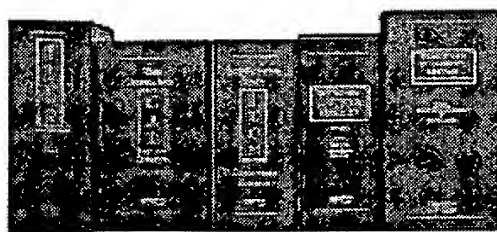
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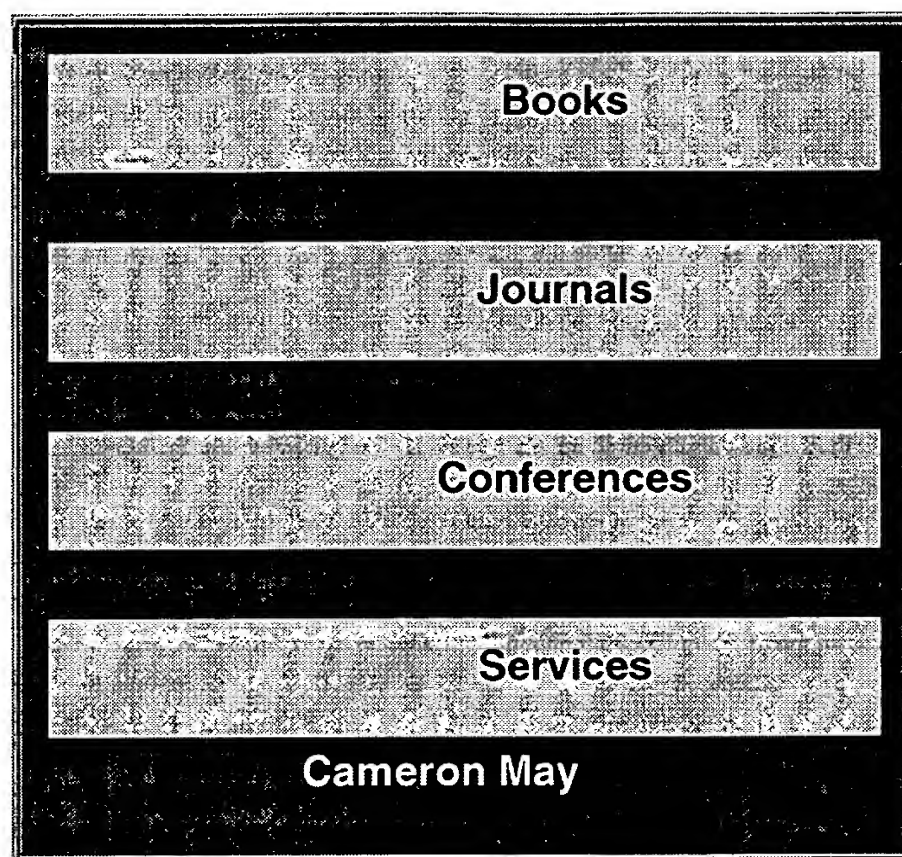
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(1993 Revision)

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 - 49. Assignment of Proceeds

A. GENERAL PROVISIONS AND DEFINITIONS

Article 1. Application of UCP

The Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500, shall apply to all documentary Credits (including to the extent to which they may be applicable, Standby Letter(s) of Credit) where they are incorporated into the text of the Credit. They are binding on all parties thereto, unless otherwise expressly stipulated in the Credit.

Article 2. Meaning of Credit

For the purposes of these Articles, the expressions "Documentary Credit (s)" and "Standby Letter(s) of Credit" (hereinafter referred to as "Credit (s)"), mean any arrangement, however named or described, whereby a bank (the "Issuing Bank") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,

- i) is to make a payment to or to the order of a third party (the "Beneficiary"), or is to accept and pay bills of exchange (Draft(s)) drawn by the Beneficiary, or
- ii) authorises another bank to effect such payment, or to accept and pay such bills of exchange (Draft(s)), or
- iii) authorises another bank to negotiate, against stipulated document(s), provided that the terms and conditions of the Credit are complied with. For the purposes of these Articles, branches of a bank in different countries are considered another bank.

Article 3. Credits v. Contracts

a. Credits, by their nature, are separate transactions from the sales or other contract(s) on which they may be based and banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the Credit. Consequently, the undertaking of a bank to pay, accept and pay Draft(s) or negotiate and/or to fulfil any other obligation under the Credit, is not subject to claims or defences by the Applicant resulting from his relationships with the Issuing Bank or the Beneficiary.

b. A Beneficiary can in no case avail himself of the contractual relationships existing between the banks or between the Applicant and the Issuing Bank.

Article 4. Documents v. Goods/Services/Performances

In Credit operations all parties concerned deal with documents, and not with goods, services and/or other performances to which the documents may relate.

Article 5. Instructions to Issue/Amend Credits

a. Instructions for the issuance of a Credit, the Credit itself, instructions for an amendment thereto, and the amendment itself, must be complete and precise. In order to guard against confusion and misunderstanding, banks should discourage any attempt

- i) to include excessive detail in the Credit or in any amendment thereto;
- ii) to give instructions to issue, advise or confirm a Credit by reference to a Credit previously issued (similar Credit) where such previous Credit has been subject to accepted amendment(s), and/or unaccepted amendment(s),

b. All instructions for the issuance of a Credit and the Credit itself and, where applicable, all instructions for an amendment thereto and the amendment itself, must state precisely the document(s) against which payment, acceptance or negotiation is to be made.

B. FORM AND NOTIFICATION OF CREDITS

Article 6. Revocable v. Irrevocable Credits

a. A Credit may be either

- i) revocable, or
- ii) irrevocable.

b. The Credit, therefore, should clearly indicate whether it is revocable or irrevocable.

c. In the absence of such indication the Credit shall be deemed to be irrevocable.

Article 7. Advising Bank's Liability

a. A Credit may be advised to a Beneficiary through another bank (the "Advising Bank") without engagement on the part of the Advising Bank, but that bank, if it elects to advise the Credit, shall take reasonable care to check the apparent authenticity of the Credit which it advises. If the bank elects not to advise the Credit, it must so inform the Issuing Bank without delay.

b. If the Advising Bank cannot establish such apparent authenticity it must inform, without delay, the bank from which the instructions appear to have been received that it has been unable to establish the authenticity of the Credit and if it elects nonetheless to advise the Credit it must inform the Beneficiary that it has not been able to establish the authenticity of the Credit.

Article 8. Revocation of a Credit

a. A revocable Credit may be amended or cancelled by the Issuing Bank at any moment and without prior notice to the Beneficiary.

b. However, the Issuing Bank must:

- i) reimburse another bank with which a revocable Credit has been made available for sight payment, acceptance or negotiation-for any payment, acceptance or negotiation made by such bank-prior to receipt by it of notice of amendment or cancellation, against documents which appear on their face to be in compliance with the terms and conditions of the Credit,

- ii) reimburse another bank with which a revocable Credit has been made available for deferred payment, if such a bank has, prior to receipt by it of notice of amendment or cancellation, taken up documents which appear on their face to be in compliance with the terms and conditions of the Credit.

Article 9. Liability of Issuing and Confirming Banks

a. An irrevocable Credit constitutes a definite undertaking of the Issuing Bank, provided that the stipulated documents are presented to the Nominated Bank or to the Issuing Bank and that the terms and conditions of the Credit are complied with:

- i) if the Credit provides for sight payment-to pay at sight;
- ii) if the Credit provides for deferred payment-to pay on the maturity date(s) determinable in accordance with the stipulations of the Credit;
- iii) if the Credit provides for acceptance;

- (a) by the Issuing Bank-to accept Draft(s) drawn by the Beneficiary on the Issuing Bank and pay them at maturity, or

- (b) by another drawee bank-to accept and pay at maturity Draft(s) drawn by the Beneficiary on the Issuing Bank in the event the drawee bank stipulated in the Credit does not accept Draft(s) drawn on it, or to pay Draft(s) accepted but not paid by such drawee bank at maturity;

- iv) if the Credit provides for negotiation-to pay without recourse to drawers and/or bona fide holders, Draft(s) drawn by the Beneficiary and/or document(s) presented under the Credit. A Credit should not be issued available by Draft(s) on the Applicant. If the Credit nevertheless calls for Draft(s) on the Applicant, banks will consider such Draft(s) as an additional document(s).

b. A confirmation of an irrevocable Credit by another bank (the "Confirming Bank") upon the authorisation or request of the Issuing Bank, constitutes a definite undertaking of the Confirming Bank, in addition to that of the Issuing Bank, provided that the stipulated documents are presented to the Confirming Bank or to any other Nominated Bank and that the terms and conditions of the Credit are complied with:

- i) if the Credit provides for sight payment-to pay at sight;
- ii) if the Credit provides for deferred payment-to pay on the maturity date(s) determinable in accordance with the stipulations of the Credit;
- iii) if the Credit provides for acceptance:

- (a) by the Confirming Bank-to accept Draft(s) drawn by the Beneficiary on the Confirming Bank and pay them at maturity, or

- (b) by another drawee bank-to accept and pay at maturity Draft(s) drawn by the Beneficiary on the

Confirming Bank, in the event the drawee bank stipulated in the Credit does not accept Draft(s) drawn on it, or to pay Draft(s) accepted but not paid by such drawee bank at maturity;

iv) if the Credit provides for negotiation-to negotiate without recourse to drawers and/or bonafide holders, Draft(s) drawn by the Beneficiary and/or document(s) presented under the Credit. A Credit should not be issued available by Draft(s) on the Applicant. If the Credit nevertheless calls for Draft(s) on the Applicant, banks will consider such Draft(s) as an additional document(s).

c. i) If another bank is authorised or requested by the Issuing Bank to add its confirmation to a Credit but is not prepared to do so, it must so inform the Issuing Bank without delay.

ii) Unless the Issuing Bank specifies otherwise in its authorisation or request to add confirmation, the Advising Bank may advise the Credit to the Beneficiary without adding its confirmation.

d. i) Except as otherwise provided by Article 48, an Irrevocable Credit can neither be amended nor cancelled without the agreement of the Issuing Bank, the Confirming Bank, if any, and the Beneficiary.

ii) The Issuing Bank shall be irrevocably bound by an amendment(s) issued by it from the time of the issuance of such amendment(s). A Confirming Bank may extend its confirmation to an amendment and shall be irrevocably bound as of the time of its advice of the amendment. A Confirming Bank may, however, choose to advise an amendment to the Beneficiary without extending its confirmation and if so, must inform the Issuing Bank and the Beneficiary without delay.

iii) The terms of the original Credit(or a Credit incorporating previously accepted amendment(s)) will remain in force for the Beneficiary until the Beneficiary communicates his acceptance of the amendment to the bank that advised such amendment. The Beneficiary should give notification of acceptance or rejection of amendment (s). If the Beneficiary fails to give such notification, the tender of documents to the Nominated Bank or Issuing Bank, that conform to the Credit and to not yet accepted amendment(s), will be deemed to be notification of acceptance by the Beneficiary of such amendment(s) and as of that moment the Credit will be amended.

iv) Partial acceptance of amendments contained in one and the same advice of amendment is not allowed and consequently will not be given any effect.

Article 10. Types of Credit

a. All Credits must clearly indicate whether they are available by sight payment, by deferred payment, by acceptance or by negotiation.

b. i) Unless the Credit stipulates that it is available only with the Issuing Bank, all Credits must nominate the bank(the "Nominated Bank") which is authorised to pay, to incur a deferred payment undertaking, to accept Draft(s) or to negotiate. In a freely negotiable Credit, any bank is a Nominated Bank. Presentation of documents must be made to the Issuing Bank or the Confirming Bank, if any, or any other Nominated Bank. Negotiation means the giving of value for Draft(s) and/or document(s) by the bank authorised to negotiate. Mere examination of the documents without giving of value does not constitute a negotiation.

c. Unless the Nominated Bank is the Confirming Bank, nomination by the Issuing Bank does not constitute any undertaking by the Nominated Bank to pay, to incur a deferred payment undertaking, to accept Draft (s), or to negotiate. Except where expressly agreed to by the Nominated Bank and so communicated to the Beneficiary, the Nominated Bank's receipt of and/or examination and/or forwarding of the documents does not make that bank liable to pay, to incur a deferred payment undertaking, to accept Draft(s), or to negotiate.

d. By nominating another bank, or by allowing for negotiation by any bank, or by authorising or requesting another bank to add its confirmation, the Issuing Bank authorises such bank to pay, accept Draft(s) or negotiate as the case may be, against documents which appear on their face to be in compliance with the terms and conditions of the Credit and undertakes to reimburse such bank in accordance with the provisions of these Articles.

Article 11. Teletransmitted and Pre-Advised Credits

a. i) When an Issuing Bank instructs an Advising Bank by an authenticated teletransmission to advise a Credit or an amendment to a Credit, the teletransmission will be deemed to be the operative Credit instrument or the operative amendment, and no mail confirmation should be sent. Should a mail confirmation nevertheless be sent, it will have no effect and the Advising Bank will have no obligation to check such mail confirmation against the operative Credit instrument or the operative amendment received by teletransmission.

ii) If the teletransmission states "full details to follow" (or words of similar effect) or states that the mail confirmation is to be the operative Credit instrument or the operative amendment, then the teletransmission will not be deemed to be the operative Credit instrument or the operative amendment. The Issuing Bank must forward the operative Credit instrument or the operative amendment to such Advising Bank without delay.

b. If a bank uses the services of an Advising Bank to have the Credit advised to the Beneficiary, it must also use the services of the same bank for advising an amendment(s)

c. A preliminary advice of the issuance or amendment of an irrevocable Credit (pre-advice), shall only be given by an Issuing Bank if such bank is prepared to issue the operative Credit instrument or the operative amendment thereto. Unless otherwise stated in such preliminary advice by the Issuing Bank, an Issuing Bank having given such pre-advice shall be irrevocably committed to issue or amend the Credit, in terms not inconsistent with the pre-advice, without delay.

Article 12. Incomplete or Unclear Instructions

If incomplete or unclear instructions are received to advise, confirm or amend a Credit, the bank requested to act on such instructions may give preliminary notification to the Beneficiary for information only and without responsibility. This preliminary notification should state clearly that the notification is provided for information only and without the responsibility of the Advising Bank. In any event, the Advising Bank must inform the Issuing Bank of the action taken and request it to provide the necessary information.

The Issuing Bank must provide the necessary information without delay. The Credit will be advised, confirmed or amended, only when complete and clear instructions have been received and if the Advising Bank is then prepared to act on the instructions.

C. LIABILITIES AND RESPONSIBILITIES

Article 13. Standard for Examination of Documents

a. Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the Credit. Compliance of the stipulated documents on their face with the terms and conditions of the Credit, shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit.

Documents not stipulated in the Credit will not be examined by banks. If they receive such documents, they shall return them to the presenter or pass them on without responsibility.

b. The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.

c. If a Credit contains conditions without stating the document(s) to be presented in compliance therewith, banks will deem such conditions as not stated and will disregard them.

Article 14. Discrepant Documents and Notice

a. When the Issuing Bank authorises another bank to pay, incur a deferred payment undertaking, accept Draft(s), or negotiate against documents which appear on their face to be in compliance with the terms and conditions of the Credit, the Issuing Bank and the Confirming Bank, if any, are bound:

i) to reimburse the Nominated Bank which has paid, incurred a deferred payment undertaking, accepted Draft(s), or negotiated,

ii) to take up the documents.

b. Upon receipt of the documents the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit, such banks may refuse to take up the documents.

c. If the Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgment approach the Applicant for a waiver of the discrepancy(ies). This does not, however, extend the period mentioned in sub-Article 13(b).

d. i) If the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, decides to refuse the documents, it must give notice to that effect by telecommunication or, if that is

not possible, by other expeditious means, without delay but no later than the close of the seventh banking day following the day of receipt of the documents. Such notice shall be given to the bank from which it received the documents, or to the Beneficiary, if it received the documents directly from him.

ii) Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.

iii) The Issuing Bank and/or Confirming Bank, if any, shall then be entitled to claim from the remitting bank refund, with interest, of any reimbursement which has been made to that bank.

e. If the Issuing Bank and/or Confirming Bank, if any, fails to act in accordance with the provisions of this Article and/or fails to hold the documents at the disposal of, or return them to the presenter, the Issuing Bank and/or Confirming Bank, if any, shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the Credit.

f. If the remitting bank draws the attention of the Issuing and/or Confirming Bank, if any, to any discrepancy(ies) in the document(s) or advises such banks that it has paid, incurred a deferred payment undertaking, accepted Draft(s) or negotiated under reserve or against an indemnity in respect of such discrepancy(ies), the Issuing Bank and/or Confirming Bank, if any, shall not be thereby relieved from any of their obligations under any provision of this Article. Such reserve or indemnity concerns only the relations between the remitting bank and the party towards whom the reserve was made, or from whom, or on whose behalf, the indemnity was obtained.

Article 15. Disclaimer on Effectiveness of Documents

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document(s), or for the general and/or particular conditions stipulated in the document(s) or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any document(s), or for the good faith or acts and/or omissions, solvency, performance or standing of the consignors, the carriers, the forwarders, the consignees or the insurers of the goods, or any other person whomsoever.

Article 16. Disclaimer on the Transmission of Messages

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in the transmission of any telecommunication. Banks assume no liability or responsibility for errors in translation and/or interpretation of technical terms, and reserve the right to transmit Credit terms without translating them.

Article 17. Force Maieure

Banks assume no liability or responsibility for the consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control, or by any strikes or lockouts. Unless specifically authorised, banks will not, upon resumption of their business, pay, incur a deferred payment undertaking, accept Draft(s) or negotiate under Credits which expired during such interruption of their business.

Article 18. Disclaimer for Acts of Instructed Party

a. Banks utilizing the services of another bank or other banks for the purpose of giving effect to the instructions of the Applicant do so for the account and at the risk of such Applicant.

b. Banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank(s),

c. i) A party instructing another party to perform services is liable for any charges, including commissions, fees, costs or expenses incurred by the instructed party in connections with its instructions.

ii) Where a Credit stipulates that such charges are for the account of a party other than the instructing party, and charges cannot be collected, the instructing party remains ultimately liable for the payment thereof.

d. The Applicant shall be bound by and liable to indemnify the banks against all obligations and responsibilities imposed by foreign laws and usages.

Article 19. Bank-to-Bank Reimbursement Arrangements

a. If an Issuing Bank intends that the reimbursement to which a paying, accepting or negotiating bank is entitled, shall be obtained by such bank (the "Claiming Bank"), claiming on another party

(the "Reimbursing Bank"), it shall provide such Reimbursing Bank in good time with the proper instructions or authorisation to honour such reimbursement claims.

b. Issuing Banks shall not require a Claiming Bank to supply a certificate of compliance with the terms and conditions of the Credit to the Reimbursing Bank.

c. An Issuing Bank shall not be relieved from any of its obligations to provide reimbursement if and when reimbursement is not received by the Claiming Bank from the Reimbursing Bank.

d. The Issuing Bank shall be responsible to the Claiming Bank for any loss of interest if reimbursement is not provided by the Reimbursing Bank on first demand, or as otherwise specified in the Credit, or mutually agreed, as the case may be.

e. The reimbursing Bank's charges should be for the account of the Issuing Bank. However, in cases where the charges are for the account of another party, it is the responsibility of the Issuing Banks to so indicate in the original Credit and in the reimbursement authorisation. In cases where the Reimbursing Bank's charges are for the account of another party they shall be collected from the Claiming Bank when the Credit is drawn under. In cases where the Credit is not drawn under, the Reimbursing Bank's charges remain the obligation of the Issuing Bank.

D. DOCUMENTS

Article 20. Ambiguity as to the Issuers of Documents

a. Terms such as "first class," "well known," "qualified," "independent," "official," "competent," "local" and the like, shall not be used to describe the issuers of any document(s) to be presented under a Credit. If such terms are incorporated in the Credit, banks will accept the relative document(s) as presented, provided that it appears on its face to be in compliance with the other terms and conditions of the Credit and not to have been issued by the Beneficiary.

b. Unless otherwise stipulated in the Credit, banks will also accept as an original document(s), a document(s) produced or appearing to have been produced:

- i) by reprographic, automated or computerized systems;
- ii) as carbon copies;

provided that it is marked as original and, where necessary, appears to be signed. A document may be signed by handwriting, by facsimile signature, by perforated signature, by stamp, by symbol, or by any other mechanical or electronic method of authentication.

c. i) Unless otherwise stipulated in the Credit, banks will accept as a copy (ies), a document(s) either labelled copy or not marked as an original-a copy(ies) need not be signed.

ii) Credits that require multiple document(s) such as "duplicate," "two fold," "two copies" and the like, will be satisfied by the presentation of one original and the remaining number in copies except where the document itself indicates otherwise.

d. Unless otherwise stipulated in the Credit, a condition under a Credit calling for a document to be authenticated, validated, legalized, visaed, certified or indicating a similar requirement, will be satisfied by any signature, mark, stamp or label on such document that on its face appears to satisfy the above condition.

Article 21. Unspecified Issuers or Contents of Documents

When documents other than transport documents, insurance documents and commercial invoices are called for, the Credit should stipulate by whom such documents are to be issued and their wording or data content. If the Credit does not so stipulate, banks will accept such documents as presented, provided that their data content is not inconsistent with any other stipulated document presented.

Article 22. Issuance Date of Documents v. Credit Date

Unless otherwise stipulated in the Credit, banks will accept a document bearing a date of issuance prior to that of the Credit, subject to such document being presented within the time limits set out in the Credit and in these Articles.

Article 23. Marine/Ocean Bill of Lading

a. If a Credit calls for a bill of lading covering a port-to-port shipment, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

i) appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by:

- the carrier or a named agent for or on behalf of the carrier, or
- the master or a named agent for or on behalf of the master.

Any signature or authentication of the carrier or master must be identified as carrier or master, as the case may be. An agent signing or authenticating for the carrier or master must also indicate the name

and the capacity of the party, i.e. carrier or master, on whose behalf that agent is acting, and

ii) indicates that the goods have been loaded on board, or shipped on a named vessel. Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the bill of lading that the goods have been loaded on board a named vessel or shipped on a named vessel, in which case the date of issuance of the bill of lading will be deemed to be the date of loading on board and the date of shipment. In all other cases loading on board a named vessel must be evidenced by a notation on the bill of lading which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment. If the bill of lading contains the indication "intended vessel," or similar qualification in relation to the vessel, loading on board a named vessel must be evidenced by an on board notation on the bill of lading which, in addition to the date on which the goods have been loaded on board, also includes the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named as the "intended vessel". If the bill of lading indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named in the bill of lading. This provision also applies whenever loading on board the vessel is indicated by pre-printed wording on the bill of lading, and

iii) indicates the port of loading and the port of discharge stipulated in the credit, notwithstanding that it:

(a) indicates a place of taking in charge different from the port of loading, and/or a place of final destination different from the port of discharge, and/or

(b) contains the indication "intended" or similar qualification in relation to the port of loading and/or port of discharge, as long as the document also states the ports of loading and/or discharge stipulated in the Credit, and

iv) consists of a sole original bill of lading, or if issued in more than one original, the full set as so issued, and

v) appears to contain all of the terms and conditions of carriage, or some of such terms and conditions by reference to a source or document other than the bill of lading (short form/blank back bill of lading), banks will not examine the contents of such terms and conditions, and

vi) contains no indication that it is subject to a charter party and/or no indication that the carrying vessel is propelled by sail only, and

vii) in all other respects meets the stipulations of the Credit.

b. For the purpose of this Article, transshipment means unloading and reloading from one vessel to another vessel during the course of ocean carriage from the port of loading to the port of discharge stipulated in the Credit.

c. Unless transshipment is prohibited by the terms of the Credit, banks will accept a bill of lading which indicates that the goods will be transhipped, provided that the entire ocean carriage is covered by one and the same bill of lading.

d. Even if the Credit prohibits transshipment, banks will accept a bill of lading which:

i) indicates that transshipment will take place as long as the relevant cargo is shipped in Container (s), Trailer(s) and/or "LASH" barge (s) as evidenced by the bill of lading, provided that the entire ocean carriage is covered by one and the same bill of lading, and/or

ii) incorporates clauses stating that the carrier reserves the right to tranship.

Article 24. Non-Negotiable Sea Waybill

a. If a Credit calls for a non-negotiable sea waybill covering a port-to-port shipment, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

i) appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by:

- the carrier or a named agent for or on behalf of the carrier, or
- the master or a named agent for or on behalf of the master.

Any signature or authentication of the carrier or master must be identified as carrier or master, as the case may be. An agent signing or authenticating for the carrier or master must also indicate the name and the capacity of the party, i.e. carrier or master, on whose behalf that agent is acting, and

ii) indicates that the goods have been loaded on board, or shipped on a named vessel. Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the non-negotiable sea waybill that the goods have been loaded on board a named vessel or shipped on a named vessel,

in which case the date of issuance of the non-negotiable sea waybill will be deemed to be the date of loading on board and the date of shipment. In all other cases loading on board a named vessel must be evidenced by a notation on the non-negotiable sea way bill which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment.

If the non-negotiable sea waybill contains the indication "intended vessel," or similar qualification in relation to the vessel, loading on board a named vessel must be evidenced by an on board notation on the non-negotiable sea waybill which, in addition to the date on which the goods have been loaded on board, includes the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named as the "intended vessel." If the non-negotiable sea waybill indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on a vessel named in the non-negotiable sea waybill. This provision also applies whenever load, ing on board the vessel is indicated by pre-printed wording on the non-negotiable sea waybill, and

iii) indicates the port of loading and the port of discharge stipulated in the Credit, notwithstanding that it:

(a) indicates a place of taking in charge different from the port of loading, and/or a place of final destination different from the port discharge, and/or

(b) contains the indication "intended" or similar qualification in relation to the port of loading and/or port of discharge, as long as the document also states the ports of loading and/or discharge stipulated in the Credit, and

iv) consists of a sole original non-negotiable sea waybill, or if issued in more than one original, the full set as so issued, and

v) appears to contain all of the terms and conditions of carriage, or some of such terms and conditions by reference to a source or document other than the non-negotiable sea waybill (short form blank back non-negotiable sea waybill); banks will not examine the contents of such terms and conditions, and

vi) contains no indication that it is subject to a charter party and/or no indication that the carrying vessel is propelled by sail only, and

vii) in all other respects meets the stipulations of the Credit.

b. For the purpose of this Article, transshipment means unloading and reloading from one vessel to another vessel during the course of ocean carriage from the port of loading to the port of discharge stipulated in the Credit.

c. Unless transshipment is prohibited by the terms of the Credit, banks will accept a non-negotiable sea waybill which indicates that the goods will be transhipped, provided that the entire ocean carriage is covered by one and the same non-negotiable sea waybill.

d. Even if the Credit prohibits transshipment, banks will accept a non-negotiable sea waybill which:

i) indicates that transshipment will take place as long as the relevant cargo is shipped in Container (s) , Trailer (s) and/or "LASH" barge (s) as evidenced by the non-negotiable sea waybill, provided that the entire ocean carriage is covered by one and the same non-negotiable sea waybill, and/or

ii) incorporates clauses stating that the carrier reserves the right to tranship.

Article 25. Charter Party Bill of Lading

a. If a Credit calls for or permits a charter party bill of lading, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

i) contains any indication that it is subject to a charter party, and

ii) appears on its face to have been signed or otherwise authenticated by:

- the master or a named agent for or on behalf of the master, or

- the owner or a named agent for or on behalf of the owner.

Any signature or authentication of the master or owner must be identified as master or owner as the case may be. An agent signing or authenticating for the master or owner must also indicate the name and the capacity of the party, i.e. master or owner, on whose behalf that agent is acting, and

iii) does or does not indicate the name of the carrier, and

iv) indicates that the goods have been loaded on board or shipped on a named vessel. Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the bill of lading that the goods have been loaded on board a named vessel or shipped on a named vessel, in which

case the date of issuance of the bill of lading will be deemed to be the date of loading on board and the date of shipment.

In all other cases loading on board a named vessel must be evidenced by a notation on the bill of lading which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment, and

- v) indicates the port of loading and the port of discharge stipulated in the Credit, and
- vi) consists of a sole original bill of lading or, if issued in more than one original, the full set as so issued, and
- vii) contains no indication that the carrying vessel is propelled by sail only, and
- viii) in all other respects meets the stipulations of the Credit.

b. Even if the Credit requires the presentation of a charter party contract in connection with a charter party bill of lading, banks will not examine such charter party contract, but will pass it on without responsibility on their part.

Article 26. Multimodal Transport Document

a. If a Credit calls for a transport document covering at least two different modes of transport(multimodal transport), banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- i) appears on its face to indicate the name of the carrier or multimodal transport operator and to have been signed or otherwise authenticated by:
 - the carrier or multimodal transport operator or a named agent for or on behalf of the carrier or multimodal transport operator,
 - the master or a named agent for or on behalf of the master.

Any signature or authentication of the carrier, multimodal transport operator or master must be identified as carrier, multimodal transport operator or master, as the case may be. An agent signing or authenticating for the carrier, multimodal transport operator or master must also indicate the name and the capacity of the party, i.e. carrier, multimodal transport operator or master, on whose behalf that agent is acting, and

- ii) indicates that the goods have been dispatched, taken in charge or loaded on board. Dispatch, taking in charge or loading on board may be indicated by wording to that effect on the multimodal transport document and the date of issuance will be deemed to be the date of dispatch, taking in charge or loading on board and the date of shipment. However, if the document indicates, by stamp or otherwise, a date of dispatch, taking in charge or loading on board, such date will be deemed to be the date of shipment, and

- iii) (a) indicates the place of taking in charge stipulated in the Credit which may be different from the port, airport or place of loading, and the place of final destination stipulated in the Credit which may be different from the port, airport or place of discharge, and/or

- (b) contains the indication "intended" or similar qualification in relation to the vessel and/or port of loading and/or port of discharge, and

- iv) consists of a sole original multimodal transport document or, if issued in more than one original, the full set as so issued, and

- v) appears to contain all of the terms and conditions of carriage, or some of such terms and conditions by reference to a source or document other than the multimodal transport document(short form/blank back multimodal transport document); banks will not examine the contents of such terms and conditions, and

- vi) contains no indication that it is subject to a charter party and/or no indication that the carrying vessel is propelled by sail only, and

- vii) in all other respects meets the stipulations of the Credit.

b. Even if the Credit prohibits transshipment, banks will accept a multimodal transport document which indicates that transshipment will or may take place, provided that the entire carriage is covered by one and the same multimodal transport document.

Article 27. Air Transport Document

a. If a Credit calls for an air transport document, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- i) appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by:
 - the carrier, or

- a named agent for or on behalf of the carrier;

Any signature or authentication of the carrier must be identified as carrier. An agent signing or authenticating for the carrier must also indicate the name and the capacity of the party, i.e. carrier, on whose behalf that agent is acting, and

ii) indicates that the goods have been accepted for carriage, and

iii) where the Credit calls for an actual date of dispatch, indicates a specific notation of such date, the date of dispatch so indicated on the air transport document will be deemed to be the date of shipment.

For the purpose of this Article, the information appearing in the box on the air transport document (marked "For Carrier Use Only" or similar expression) relative to the flight number and date will not be considered as a specific notation of such date of dispatch. In all other cases, the date of issuance of the air transport document will be deemed to be the date of shipment, and

iv) indicates the airport of departure and the airport of destination stipulated in the Credit, and

v) appears to be the original for consignor/shipper even if the Credit stipulates a full set of originals, or similar expressions, and

vi) appears to contain all of the terms and conditions of carriage, or some of such terms and conditions, by reference to a source or document other than the air transport document; banks will not examine the contents of such terms and conditions, and

vii) in all other respects meets the stipulations of the Credit.

b. For the purpose of this Article, transshipment means unloading and reloading from one aircraft to another aircraft during the course of carriage from the airport of departure to the airport of destination stipulated in the Credit.

c. Even if the Credit prohibits transshipment, banks will accept an air transport document which indicates that transshipment will or may take place, provided that the entire carriage is covered by one and the same air transport document.

Article 28. Road, Rail or Inland Waterway Transport Documents

a. If a Credit calls for a road, rail, or inland waterway transport document, banks will, unless otherwise stipulated in the Credit, accept a document of the type called for, however named, which:

i) appears on its face to indicate the name of the carrier and to have been signed or otherwise authenticated by the carrier or a named agent for or on behalf of the carrier and/or to bear a reception stamp or other indication of receipt by the carrier or a named agent for or on behalf of the carrier.

Any signature, authentication, reception stamp or other indication of receipt of the carrier, must be identified on its face as that of the carrier. An agent signing or authenticating for the carrier, must also indicate the name and the capacity of the party, i.e. carrier, on whose behalf that agent is acting, and

ii) indicates that the goods have been received for shipment, dispatch or carriage or wording to this effect. The date of issuance will be deemed to be the date of shipment unless the transport document contains a reception stamp, in which case the date of the reception stamp will be deemed to be the date of shipment, and

iii) indicates the place of shipment and the place of destination stipulated in the Credit, and

iv) in all other respects meets the stipulations of the Credit.

b. In the absence of any indication on the transport document as to the numbers issued, banks will accept the transport document(s) presented as constituting a full set. Banks will accept as original(s) the transport document(s) whether marked as original(s) or not.

c. For the purpose of this Article, transshipment means unloading and reloading from one means of conveyance to another means of conveyance, in different modes of transport, during the course of carriage from the place of shipment to the place of destination stipulated in the Credit.

d. Even if the Credit prohibits transshipment, banks will accept a road, rail, or inland waterway transport document which indicates that transshipment will or may take place, provided that the entire carriage is covered by one and the same transport document and within the same mode of transport.

Article 29. Courier and Post Receipts

a. If a Credit calls for a post receipt or certificate of posting, banks will, unless otherwise stipulated in the Credit, accept a post receipt or certificate of posting which:

i) appears on its face to have been stamped or otherwise authenticated and dated in the place from which the Credit stipulates the goods are to be shipped or dispatched and such date will be deemed to be the date of shipment or dispatch, and

- ii) in all other respects meets the stipulations of the Credit.
- b. If a Credit calls for a document issued by a courier or expedited delivery service evidencing receipt of the goods for delivery, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:
 - i) appears on its face to indicate the name of the courier/service, and to have been stamped, signed or otherwise authenticated by such named courier/service (unless the Credit specifically calls for a document issued by a named Courier/Service, banks will accept a document issued by any Courier/Service), and
 - ii) indicates a date of pick-up or of receipt or wording to this effect, such date being deemed to be the date of shipment or dispatch, and
 - iii) in all other respects meets the stipulations of the Credit.

Article 30. Transport Documents issued by Freight Forwarders

Unless otherwise authorised in the Credit, banks will only accept a transport document issued by a freight forwarder if it appears on its face to indicate:

- i) the name of the freight forwarder as a carrier or multimodal transport operator and to have been signed or otherwise authenticated by the freight forwarder as carrier or multimodal transport operator, or
- ii) the name of the carrier or multimodal transport operator and to have been signed or otherwise authenticated by the freight forwarder as a named agent for or on behalf of the carrier or multimodal transport operator.

Article 31. "On Deck," "Shipper's Load and Count," Name of Consignor

Unless otherwise stipulated in the Credit, banks will accept a transport document which:

- i) does not indicate, in the case of carriage by sea or by more than one means of conveyance including carriage by sea, that the goods are or will be loaded on deck. Nevertheless, banks will accept a transport document which contains a provision that the goods may be carried on deck, provided that it does not specifically state that they are or will be loaded on deck, and/or
- ii) bears a clause on the face thereof such as "shipper's load and count" or "said by shipper to contain" or words of similar effect, and/or
- iii) indicates as the consignor of the goods a party other than the beneficiary of the Credit.

Article 32. Clean Transport Documents

- a. A clean transport document is one which bears no clause or notation which expressly declares a defective condition of the goods and/or the packaging.
- b. Banks will not accept transport documents bearing such clauses or notations unless the Credit expressly stipulates the clauses or notations which may be accepted.
- c. Banks will regard a requirement in a Credit for a transport document to bear the clause "clean on board" as complied with if such transport document meets the requirements of this Article and of Articles 23, 24, 25, 26, 27, 28 or 30.

Article 33. Freight Payable/Prepaid Transport Documents

- a. Unless otherwise stipulated in the Credit, or inconsistent with any of the documents presented under the Credit, banks will accept transport documents stating that freight or transportation charges (hereafter referred to as "freight") have still to be paid.
- b. If a Credit stipulates that the transport document has to indicate that freight has been paid or prepaid, banks will accept a transport document on which words clearly indicating payment or prepayment of freight appear by stamp or otherwise, or on which payment or prepayment of freight is indicated by other means. If the Credit requires courier charges to be paid or prepaid banks will also accept a transport document issued by a courier or expedited delivery service evidencing that courier charges are for the account of a party other than the consignee.
- c. The words "freight prepayable" or "freight to be prepaid" or words of similar effect, if appearing on transport documents, will not be accepted as constituting evidence of the payment of freight.
- d. Banks will accept transport documents bearing reference by stamp or otherwise to costs additional to the freight, such as costs of, or disbursements incurred in connection with, loading, unloading or similar operations, unless the conditions of the credit specifically prohibit such reference.

Article 34. Insurance Documents

- a. Insurance documents must appear on their face to be issued and signed by insurance companies or underwriters or their agents.
- b. If the insurance document indicates that it has been issued in more than one original, all the

originals must be presented unless otherwise authorised in the Credit.

c. Cover notes issued by brokers will not be accepted, unless specifically authorised in the Credit. d. Unless otherwise stipulated in the Credit, banks will accept an insurance certificate or a declaration under an open cover pre-signed by insurance companies or underwriters or their agents. If a Credit specifically calls for an insurance certificate or a declaration under an open cover, banks will accept, in lieu thereof, an insurance policy.

e. Unless otherwise stipulated in the Credit, or unless it appears from the insurance document that the cover is effective at the latest from the date of loading on board or dispatch or taking in charge of the goods, banks will not accept an insurance document which bears a date of issuance later than the date of loading on board or dispatch or taking in charge as indicated in such transport document.

f. i) Unless otherwise stipulated in the Credit, the insurance document must be expressed in the same currency as the Credit.

ii) Unless otherwise stipulated in the Credit, the minimum amount for which the insurance document must indicate the insurance cover to have been effected is the CIF(cost, insurance and freight("named port of destination")) or CIP(carriage and insurance paid to("named place of destination")) value of the goods, as the case may be, plus 10%, but only when the CIF or CIP value can be determined from the documents on their face. Otherwise, banks will accept as such minimum amount 110% of the amount for which payment, acceptance or negotiation is requested under the Credit, or 110% of the gross amount of the invoice, whichever is the greater.

Article 35. Type of Insurance Cover

a. Credits should stipulate the type of insurance required and, if any, the additional risks which are to be covered. Imprecise terms such as "usual risks" or "customary risks" shall not be used, if they are used, banks will accept insurance documents as presented, without responsibility for any risks not being covered.

b. Failing specific stipulations in the Credit, banks will accept insurance documents as presented, without responsibility for any risks not being covered.

c. Unless otherwise stipulated in the Credit, banks will accept an insurance document which indicates that the cover is subject to a franchise or on excess (deductible).

Article 36. All Risks Insurance Cover

There a Credit stipulates "insurance against all risks", banks will accept an insurance document which contains any "all risks" notation or clause, whether or not bearing the heading "all risks", even if the insurance document indicates that certain risks are excluded, without responsibility for any risk(s) not being covered.

Article 37. Commercial Invoices

a. Unless otherwise stipulated in the Credit, commercial invoices;

i) must appear on their face to be issued by the Beneficiary named in the Credit(except as provided in Article 48), and

ii) must be made out in the name of the Applicant(except as provided in sub-Article 48(h)), and

iii) need not be signed.

b. Unless otherwise stipulated in the Credit, banks may refuse commercial invoices issued for amounts in excess of the amount permitted by the Credit. Nevertheless, if a bank authorised to pay, incur a deferred payment undertaking, accept Draft(s), or negotiate under a Credit accepts such invoices, its decision will be binding upon all parties, provided that such bank has not paid, incurred a deferred payment undertaking, accepted Draft(s) or negotiated for an amount in excess of that permitted by the Credit.

c. The description of the goods in the commercial invoice must correspond with the description in the Credit. In all other documents, the goods may be described in general terms not inconsistent with the description of the goods in the Credit.

Article 38. Other Documents

If a Credit calls for an attestation or certification of weight in the case of transport other than by sea, bank will accept a weight stamp or declaration of weight which appears to have been superimposed on the transport document by the carrier or his agent unless the Credit specifically stipulates that the attestation or certification of weight must be by means of a separate document.

E. MISCELLANEOUS PROVISIONS

Article 39. Allowances in Credit Amount, Quantity and Unit Price

a. The words "about," "approximately," "circa" or similar expressions used in connection with the

amount of the Credit or the quantity or the unit price stated in the Credit are to be construed as allowing a difference not to exceed 10% more or 10% less than the amount or the quantity or the unit price to which they refer.

b. Unless a Credit stipulates that the quantity of the goods specified must not be exceeded or reduced, a tolerance of 5% more or 5% less will be permissible, always provided that the amount of the drawings does not exceed the amount of the Credit. This tolerance does not apply when the Credit stipulates the quantity in terms of a stated number of packing units or individual items.

c. Unless a Credit which prohibits partial shipments stipulates otherwise, or unless sub-Article(b) above is applicable, a tolerance of 5% less in the amount of the drawing will be permissible, provided that if the Credit stipulates the quantity of the goods, such quantity of goods is shipped in full, and if the Credit stipulates a unit price, such price is not reduced. This provision does not apply when expressions referred to in sub-Article(a) above are used in the Credit.

Article 40. Partial Shipments/Drawings

a. Partial drawings and/or shipments are allowed, unless the Credit stipulates otherwise.

b. Transport documents which appear on their face to indicate that shipment has been made on the same means of conveyance and for the same journey, provided they indicate the same destination, will not be regarded as covering partial shipments, even if the transport documents indicate different dates of shipment and/or different ports of loading, places of taking in charge, or despatch.

c. Shipments made by post or by courier will not be regarded as partial shipments if the post receipts or certificates of posting or courier's receipts or dispatch notes appear to have been stamped, signed or otherwise authenticated in the place from which the Credit stipulates the goods are to be dispatched, and on the same date.

Article 41. Instalment Shipments/Drawings

If drawings and/or shipments by instalments within given periods are stipulated in the Credit and any instalment is not drawn and/or shipped within the period allowed for that instalment, the Credit ceases to be available for that and any subsequent instalments, unless otherwise stipulated in the Credit.

Article 42. Expiry Date and Place for Presentation of Documents

a. All Credits must stipulate an expiry date and a place for presentation of documents for payment, acceptance, or with the exception of freely negotiable Credits, a place for presentation of documents for negotiation. An expiry date stipulated for payment, acceptance or negotiation will be construed to express an expiry date for presentation of documents.

b. Except as provided in sub-Article 44(a), documents must be presented on or before such expiry date.

c. If an Issuing Bank states that the Credit is to be available "for one month," "for six months," or the like, but does not specify the date from which the time is to run, the date of issuance of the Credit by the Issuing Bank will be deemed to be the first day from which such time is to run. Banks should discourage indication of the expiry date of the Credit in this manner.

Article 43. Limitation on the Expiry Date

a. In addition to stipulating an expiry date for presentation of documents, every Credit which calls for a transport document(s) should also stipulate a specified period of time after the date of shipment during which presentation must be made in compliance with the terms and conditions of the Credit. If no such period of time is stipulated, banks will not accept documents presented to them later than 21 days after the date of shipment. In any event, documents must be presented not later than the expiry date of the Credit.

b. In cases in which sub-Article 40(b) applies, the date of shipment will be considered to be the latest shipment date on any of the transport documents presented.

Article 44. Extension of Expiry Date

a. If the expiry date of the Credit and/or the last day of the period of time for presentation of documents stipulated by the Credit or applicable by virtue of Article 43 falls on a day on which the bank to which presentation has to be made is closed for reasons other than those referred to in Article 17, the stipulated expiry date and/or the last day of the period of time after the date of shipment for presentation of documents, as the case may be, shall be extended to the first following day on which such bank is open.

b. The latest date for shipment shall not be extended by reason of the extension of the expiry date and/or the period of time after the date of shipment for presentation of documents in accordance with

sub-Article (a) above. If no such latest date for shipment is stipulated in the Credit or amendments thereto, banks will not accept transport documents indicating a date of shipment later than the expiry date stipulated in the Credit or amendments thereto.

c. The bank to which presentation is made on such first following business day must provide a statement that the documents were presented within the time limits extended in accordance with sub-Article 44(a) of the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500.

Article 45. Hours of Presentation

Banks are under no obligation to accept presentation of documents outside their banking hours.

Article 46. General Expressions as to Dates for Shipment

a. Unless otherwise stipulated in the Credit, the expression "shipment" used in stipulating an earliest and/or a latest date for shipment will be understood to include expressions such as, "loading on board," "dis. patch," "accepted for carriage," "date of post receipt," "date of pick-up," and the like, and in the case of a credit calling for a multimodal transport document the expression "taking in charge."

b. Expressions such as "prompt," "immediately," "as soon as possible," and the like should not be used. If they are used banks will disregard them.

c. If the expression "on or about" or similar expressions are used, banks will interpret them as a stipulation that shipment is to be made during the period from five days before to five days after the specified date, both end days included.

Article 47. Date Terminology for Periods of Shipment

a. The words "to," "until," "till," "from" and words of similar import applying to any date or period in the Credit referring to shipment will be understood to include the date mentioned.

b. The word "after" will be understood to exclude the date mentioned.

c. The terms "first half," "second half" of a month shall be construed respectively as the 1st to the 15th, and the 16th to the last day of such month, all dates inclusive.

d. The terms "beginning," "middle," or "end" of a month shall be construed respectively as the 1st to the 10th, the 11th to the 20th, and the 21st to the last day of such month, all dates inclusive.

F. TRANSFERABLE CREDIT

Article 48. Transferable Credit

a. A transferable Credit is a Credit under which the Beneficiary(First Beneficiary) may request the bank authorised to pay, incur a deferred payment undertaking, accept or negotiate (the "Transferring Bank"), or in the case of a freely negotiable Credit, the bank specifically authorised in the Credit as a Transferring Bank, to make the Credit available in whole or in part to one or more other Beneficiary(ies) (Second Beneficiary(ies)).

b. A Credit can be transferred only if it is expressly designated as "transferable" by the Issuing Bank. Terms such as "divisible," "fractionable," "assignable," and "transmissible" do not render the Credit transferable. If such terms are used they shall be disregarded.

c. A Transferring Bank shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank.

d. At the time of making a request for transfer and prior to transfer of the Credit, the First Beneficiary must irrevocably instruct the Transferring Bank whether or not he retains the right to refuse to allow the Transferring Bank to advise amendments to the Second Beneficiary(ies). If the Transferring Bank consents to the transfer under these conditions, it must, at the time of transfer, advise the Second Beneficiary(ies) of the First Beneficiary's instructions regarding amendments.

e. If a Credit is transferred to more than one Second Beneficiary(ies), refusal of an amendment by one or more Second Beneficiary(ies) does not invalidate the acceptance(s) by the other Second Beneficiary(ies) with respect to whom the Credit will be amended accordingly. With respect to the Second Beneficiary(ies) who rejected the amendment, the Credit will remain unamended.

f. Transferring Bank charges in respect of transfers including commissions, fees, costs or expenses are payable by the First Beneficiary, unless otherwise agreed. If the Transferring Bank agrees to transfer the Credit it shall be under no obligation to effect the transfer until such charges are paid.

g. Unless otherwise stated in the Credit, a transferable Credit can be transferred once only.

Consequently, the Credit cannot be transferred at the request of the Second Beneficiary to any subsequent Third Beneficiary. For the purpose of this Article, a retransfer to the First Beneficiary does not constitute a prohibited transfer. Fractions of a transferable Credit(not exceeding in the

aggregate the amount of the Credit) can be transferred separately, provided partial shipments/drawings are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the Credit.

h. The Credit can be transferred only on the terms and conditions specified in the original Credit, with the exception of:

- the amount of the Credit,
 - any unit price stated therein,
 - the expiry date,
 - the last date for presentation of documents in accordance with Article 43,
 - the period for shipment,
- any or all of which may be reduced or curtailed.

The percentage for which insurance cover must be effected may be increased in such a way as to provide the amount of cover stipulated in the original Credit, or these Articles. In addition, the name of the First Beneficiary can be substituted for that of the Applicant, but if the name of the Applicant is specifically required by the original Credit to appear in any document(s) other than the invoice, such requirement must be fulfilled.

i. The First Beneficiary has the right to substitute his own invoice(s) (and Draft(s)) for those of the Second Beneficiary(ies), for amounts not in excess of the original amount stipulated in the Credit and for the original unit prices if stipulated in the Credit, and upon such substitution of invoice(s) (and Draft(s)) the First Beneficiary can draw under the Credit for the difference, if any, between his invoice(s) and the Second Beneficiary's(ies') invoice(s).

When a Credit has been transferred and the First Beneficiary is to supply his own invoice(s) (and Draft(s)) in exchange for the Second Beneficiary's(ies') invoice(s) (and Draft(s)) but fails to do so on first demand, the Transferring Bank has the right to deliver to the Issuing Bank the documents received under the transferred Credit, including the Second Beneficiary's(ies') invoice(s) (and Draft(s)) without further responsibility to the First Beneficiary.

j. The First Beneficiary may request that payment or negotiation be effected to the Second Beneficiary(ies) at the place to which the Credit has been transferred up to and including the expiry date of the Credit, unless the original Credit expressly states that it may not be made available for payment or negotiation at a place other than that stipulated in the Credit. This is without prejudice to the First Beneficiary's right to substitute subsequently his own invoice(s) (and Draft(s)) for those of the Second Beneficiary(ies) and to claim any difference due to him.

G. ASSIGNMENT OF PROCEEDS

Article 49. Assignment of Proceeds

The fact that a Credit is not stated to be transferable shall not affect the Beneficiary's right to assign any proceeds to which he may be, or may become, entitled under such Credit, in accordance with the provisions of the applicable law. This Article relates only to the assignment of proceeds and not to the assignment of the right to perform under the Credit itself.

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

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United Nations Convention On Contracts For The International Sale Of Goods, 1980 (CISG)

[Preamble]

THE STATES PARTIES TO THIS
CONVENTION,

2

BEARING IN MIND the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

CONSIDERING that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

BEING OF THE OPINION that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

HAVE DECREED as follows:

PART I - Sphere of Application and General Provisions

Chapter I - Sphere of Application

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) when the States are Contracting States; or

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(b) when the rules of private international law lead to the application of the law of a Contracting State.

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(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

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(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

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Article 2

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This Convention does not apply to sales:

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(a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

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(b) by auction;

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(c) on execution or otherwise by authority of law;

(d) of stocks, shares, investment securities, negotiable instruments or money;

(e) of ships, vessels, hovercraft or aircraft;

(f) of electricity.

Article 3

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

(a) the validity of the contract or of any of its provisions or of any usage;

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(b) the effect which the contract may have on the property in the goods sold.

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Article 5

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This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

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Article 6

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The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

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Chapter II - General Provisions

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Article 7

35

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

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(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in

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conformity with the law applicable by virtue of the rules of private international law.

Article 8

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

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Article 10

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For the purposes of this Convention:

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(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

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(b) if a party does not have a place of business, reference is to be made to his habitual residence.

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Article 11

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A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

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Article 12

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Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

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Article 13

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For the purposes of this Convention "writing" includes telegram and telex.

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PART II - Formation of the Contract

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Article 14

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(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

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(2) A proposal other than one addressed to one or more specific persons is to be

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considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

Article 18

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

(1) A reply to an offer which purports to

be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance

fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

PART III - Sale of Goods

Chapter I - General Provisions

Article 25

A breach of contract committed by one of

the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so

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under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

Chapter II - Obligations of the Seller

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

Section I - Delivery of the goods and handing over of documents

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

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(a) if the contract of sale involves carriage of the goods - in handing the goods over to the first carrier for transmission to the buyer;

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(b) if, in cases not within the preceding subparagraph, the contract related to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place - in placing the goods at the buyer's disposal at that place;

109

(c) in other cases - in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

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Article 32

111

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the

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seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

(a) if a date is fixed by or determinable from the contract, on that date;

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

(c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over

documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

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Section II - Conformity of the goods and third party claims

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Article 35

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(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

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(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

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(a) are fit for the purposes for which goods of the same description would ordinarily be used;

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(b) are fit for any particular purpose

expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs (a) to (d) of the preceding paragraph for any lack of conformity of the goods if at the time of the conclusion of the contract the buyer knew or could not have been unaware of such lack of conformity.

Article 36

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

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(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

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Article 37

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If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

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Article 38

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(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

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(2) If the contract involves carriage of

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the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispached by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispach, examination may be deferred until after the goods have arrived at the new destination.

Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time-limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

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Article 41

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The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

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Article 42

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(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

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(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would

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be resold or otherwise used in that State; or

(b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

(a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

(b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

Article 43

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and

the nature of it.

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Article 44

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Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

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Section III - Remedies for breach of contract by the seller

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Article 45

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(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

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(a) exercise the rights provided in articles 46 to 52;

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(b) claim damages as provided in articles 74 to 77.

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(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

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(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within

the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the

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preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than

late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the

price.

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Article 51

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(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

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(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

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Article 52

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(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

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(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

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Chapter III - Obligations of the Buyer

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Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

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Section I - Payment of the price

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Article 54

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The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

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Article 55

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Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

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Article 56

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If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

(a) at the seller's place of business; or

(b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increases in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the

price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II - Taking delivery

Article 60

The buyer's obligation to take delivery consists:

(a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and

(b) in taking over the goods.

Section III - Remedies for breach of contract by the buyer

Article 61

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

(a) exercise the rights provided in articles 62 to 65;

(b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Article 63

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within

the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance by the buyer, within a

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reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) or article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the

seller is binding.

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Chapter IV - Passing of Risk

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Article 66

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Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

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Article 67

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(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

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(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the

goods, by shipping documents, by notice given to the buyer or otherwise.

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Article 68

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The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

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Article 69

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(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

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(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that

place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

Chapter V - Provisions Common to the Obligations of the Seller and of the Buyer

Section I - Anticipatory breach and instalment contracts

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability to perform or in his creditworthiness; or

(b) his conduct in preparing to perform

or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding

paragraph do not apply if the other party has declared that he will not perform his obligations.

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Article 73

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(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

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(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

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(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II - Damages

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

(1) If the contract is avoided and there is a current price for the goods, the party claiming

damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

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Section III - Interest

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV - Exemptions

Article 79

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged

would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V - Effects of avoidance

Article 81

(1) Avoidance of the contract releases

both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

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(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course normal use before he discovered or ought to have discovered the lack of conformity.

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Article 83

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A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

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Article 84

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(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

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(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

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(a) if he must make restitution of the goods or part of them; or

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(b) if it is impossible for him to make

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restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

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Section VI - Preservation of the goods

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Article 85

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If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

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Article 86

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(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to

retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking

them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PART IV - Final Provisions

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains

provisions concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be

bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of

business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

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Article 94

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(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

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(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

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(3) If a State which is the object of a declaration under the preceding paragraph

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subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)(b) of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

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(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

357

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

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(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

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(5) A withdrawal of a declaration made

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under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of

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ratification, acceptance, approval or accession.

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(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

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(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 52 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

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(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention

and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary co-ordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State

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referred to in subparagraph (1)(b) of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)(a) or the Contracting State referred to in subparagraph (1)(b) of article 1.

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Article 101

373

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

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(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

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[Post Provisions]

[Post Clauses (If any: Signed; Witnessed; Done; Authentic Texts; & Deposited Clauses)]

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty,

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in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

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Endnotes

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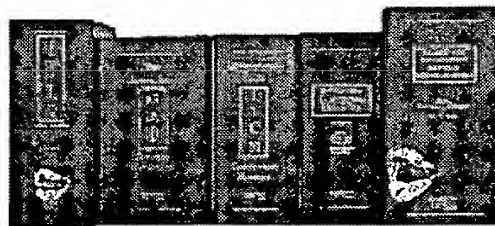
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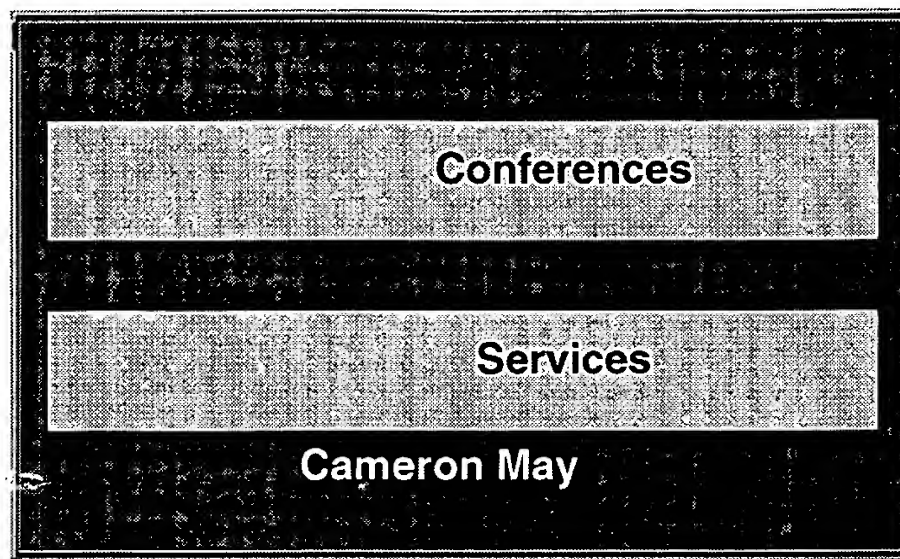
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**UNCITRAL Convention on International Bills of
Exchange and International Promissory Notes,
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3. The concepts of "holder" and "protected holder"
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CHAPTER I. - Sphere Of Application And Form Of The Instrument

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Article 1

4

1. This Convention applies to an international bill of exchange when it contains the heading "International bill of exchange (UNCITRAL Convention)" and also contains in its text the words "International bill of exchange (UNCITRAL Convention)".

5

2. This Convention applies to an international promissory note when it contains the heading "International promissory note (UNCITRAL Convention)" and also contains in its text the words "International promissory note (UNCITRAL Convention)".

3. This Convention does not apply to cheques.

Article 2

1. An international bill of exchange is a bill of exchange which specifies at least two of the following places and indicates that any two so specified are situated in different States:

(a) The place where the bill is drawn;

(b) The place indicated next to the signature of the drawer;

(c) The place indicated next to the name of the drawee;

(d) The place indicated next to the name of the payee;

(e) The place of payment, provided that either the place where the bill is drawn or the place of payment is specified on the bill and that such place is situated in a Contracting State.

2. An international promissory note is a promissory note which specifies at least two of the following places and indicates that any two so specified are situated in different States:

(a) The place where the note is made;

(b) The place indicated next to the

signature of the maker;

(c) The place indicated next to the name of the payee;

(d) The place of payment, provided that the place of payment is specified on the note and that such place is situated in a Contracting State.

3. This Convention does not deal with the question of sanctions that may be imposed under national law in cases where an incorrect or false statement has been made on an instrument in respect of a place referred to in paragraph 1 or 2 of this article. However, any such sanctions shall not affect the validity of the instrument or the application of this Convention.

Article 3

1. A bill of exchange is a written instrument which:

(a) Contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to his order;

(b) Is payable on demand or at a definite time;

(c) Is dated;

(d) Is signed by the drawer.

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2. A promissory note is a written instrument which:

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(a) Contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to his order;

27

(b) Is payable on demand or at a definite time;

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(c) Is dated;

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(d) Is signed by the maker.

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CHAPTER II. - Interpretation

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Section 1. - General provisions

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Article 4

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In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international transactions.

2.1.1

Article 5

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In this Convention:

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(a) "Bill" means an international bill of exchange governed by this Convention;

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(b) "Note" means an international promissory note governed by this Convention;

(c) "Instrument" means a bill or a note;

(d) "Drawee" means a person on whom a bill is drawn and who has not accepted it;

(e) "Payee" means a person in whose favour the drawer directs payment to be made or to whom the maker promises to pay;

(f) "Holder" means a person in possession of an instrument in accordance with article 15;

(g) "Protected holder" means a holder who meets the requirements of article 29;

(h) "Guarantor" means any person who undertakes an obligation of guarantee under article 46, whether governed by paragraph 4 (b) ("guaranteed") or paragraph 4 (c) ("aval") of article 47;

(i) "Party" means a person who has signed an instrument as drawer, maker, acceptor, endorser or guarantor;

(j) "Maturity" means the time of payment referred to in paragraphs 4, 5, 6 and 7 of article 9;

(k) "Signature" means a handwritten

signature, its facsimile or an equivalent authentication effected by any other means; "forged signature" includes a signature by the wrongful use of such means;

(I) "Money" or "currency" includes a monetary unit of account which is established by an intergovernmental institution or by agreement between two or more States, provided that this Convention shall apply without prejudice to the rules of the intergovernmental institution or to the stipulations of the agreement.

Article 6

For the purposes of this Convention, a person is considered to have knowledge of a fact if he has actual knowledge of that fact or could not have been unaware of its existence.

Section 2. - Interpretation of formal requirements

Article 7

The sum payable by an instrument is deemed to be a definite sum although the instrument states that it is to be paid:

(a) With interest;

(b) By instalments at successive dates;

(c) By instalments at successive dates with a stipulation in the instrument that upon default in payment of any instalment the unpaid balance becomes due;

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(d) According to a rate of exchange indicated in the instrument or to be determined as directed by the instrument; or

57

(e) In a currency other than the currency in which the sum is expressed in the instrument.

58

Article 8

59

1. If there is a discrepancy between the sum expressed in words and the sum expressed in figures, the sum payable by the instrument is the sum expressed in words.

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2. If the sum is expressed more than once in words, and there is a discrepancy, the sum payable is the smaller sum. The same rule applies if the sum is expressed more than once in figures only, and there is a discrepancy.

61

3. If the sum is expressed in a currency having the same description as that of at least one other State than the State where payment is to be made, as indicated in the instrument, and the specified currency is not identified as the currency of any particular State, the currency is to be considered as the currency of the State

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where payment is to be made.

4. If an instrument states that the sum is to be paid with interest, without specifying the date from which interest is to run, interest runs from the date of the instrument.

5. A stipulation stating that the sum is to be paid with interest is deemed not to have been written on the instrument unless it indicates the rate at which interest is to be paid.

6. A rate at which interest is to be paid may be expressed either as a definite rate or as a variable rate. For a variable rate to qualify for this purpose, it must vary in relation to one or more reference rates of interest in accordance with provisions stipulated in the instrument and each such reference rate must be published or otherwise available to the public and not be subject, directly or indirectly, to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions.

7. If the rate at which interest is to be paid is expressed as a variable rate, it may be stipulated expressly in the instrument that such rate shall not be less than or exceed a specified rate of interest, or that the variations are

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otherwise limited.

8. If a variable rate does not qualify under paragraph`6 of this article or for any reason it is not possible to determine the numerical value of the variable rate for any period, interest shall be payable for the relevant period at the rate calculated in accordance with paragraph`2 of article 70.

Article 9

1. An instrument is deemed to be payable on demand:

(a) If it states that it is payable at sight or on demand or on presentment or if it contains words of similar import; or

(b) If no time of payment is expressed.

2. An instrument payable at a definite time which is accepted or endorsed or guaranteed after maturity is an instrument payable on demand as regards the acceptor, the endorser or the guarantor.

3. An instrument is deemed to be payable at a definite time if it states that it is payable:

(a) On a stated date or at a fixed period after a stated date or at a fixed period after the date of the instrument;

(b) At a fixed period after sight;

75

(c) By instalments at successive dates; or

76

(d) By instalments at successive dates with the stipulation in the instrument that upon default in payment of any instalment the unpaid balance becomes due.

77

4. The time of payment of an instrument payable at a fixed period after date is determined by reference to the date of the instrument.

78

5. The time of payment of a bill payable at a fixed period after sight is determined by the date of acceptance or, if the bill is dishonoured by non-acceptance, by the date of protest or, if protest is dispensed with, by the date of dishonour.

79

6. The time of payment of an instrument payable on demand is the date on which the instrument is presented for payment.

80

7. The time of payment of a note payable at a fixed period after sight is determined by the date of the visa signed by the maker on the note or, if his visa is refused, by the date of presentment.

81

8. If an instrument is drawn, or made, payable one or more months after a stated date

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or after the date of the instrument or after sight, the instrument is payable on the corresponding date of the month when payment must be made. If there is no corresponding date, the instrument is payable on the last day of that month.

Article 10

1. A bill may be drawn:

(a) By two or more drawers;

(b) Payable to two or more payees.

2. A note may be made:

(a) By two or more makers;

(b) Payable to two or more payees.

3. If an instrument is payable to two or more payees in the alternative, it is payable to any one of them and any one of them in possession of the instrument may exercise the rights of a holder. In any other case the instrument is payable to all of them and the rights of a holder may be exercised only by all of them.

Article 11

A bill may be drawn by the drawer:

(a) On himself;

(b) Payable to his order.

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Section 3. - Completion of an incomplete instrument

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Article 12

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1. An incomplete instrument which satisfies the requirements set out in paragraph` 1 of article` 1 and bears the signature of the drawer or the acceptance of the drawee, or which satisfies the requirements set out in paragraph` 2 of article` 1 and paragraph` 2` (d) of article` 3, but which lacks other elements pertaining to one or more of the requirements set out in articles` 2 and 3, may be completed, and the instrument so completed is effective as a bill or a note.

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2. If such an instrument is completed without authority or otherwise than in accordance with the authority given:

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(a) A party who signed the instrument before the completion may invoke such lack of authority as a defence against a holder who had knowledge of such lack of authority when he became a holder;

100

(b) A party who signed the instrument after the completion is liable according to the terms of the instrument so completed.

CHAPTER III. - Transfer

Article 13

An instrument is transferred:

(a) By endorsement and delivery of the instrument by the endorser to the endorsee; or

(b) By mere delivery of the instrument if the last endorsement is in blank.

Article 14

1. An endorsement must be written on the instrument or on a slip affixed thereto ("allonge"). It must be signed.

2. An endorsement may be:

(a) In blank, that is, by a signature alone or by a signature accompanied by a statement to the effect that the instrument is payable to a person in possession of it;

(b) Special, that is, by a signature accompanied by an indication of the person to whom the instrument is payable.

3. A signature alone, other than that of the drawee, is an endorsement only if placed on the back of the instrument.

Article 15

1. A person is a holder if he is:

113

(a) The payee in possession of the instrument; or

114

(b) In possession of an instrument which has been endorsed to him, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, even if any endorsement was forged or was signed by an agent without authority.

115

2. If an endorsement in blank is followed by another endorsement, the person who signed this last endorsement is deemed to be an endorsee by the endorsement in blank.

116

3. A person is not prevented from being a holder by the fact that the instrument was obtained by him or any previous holder under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument.

117

Article 16

118

The holder of an instrument on which the last endorsement is in blank may:

119

(a) Further endorse it either by an

120

endorsement in blank or by a special endorsement;

(b) Convert the blank endorsement into a special endorsement by indicating in the endorsement that the instrument is payable to himself or to some other specified person; or

(c) Transfer the instrument in accordance with subparagraph (b) of article 13.

Article 17

1. If the drawer or the maker has inserted in the instrument such words as "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred except for purposes of collection, and any endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement for collection.

2. If an endorsement contains the words "not negotiable", "not transferable", "not to order", "pay (X) only", or words of similar import, the instrument may not be transferred further except for purposes of collection, and any subsequent endorsement, even if it does not contain words authorizing the endorsee to collect the instrument, is deemed to be an endorsement

for collection.

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Article 18

1. An endorsement must be unconditional.

127

2. A conditional endorsement transfers the instrument whether or not the condition is fulfilled. The condition is ineffective as to those parties and transferees who are subsequent to the endorsee.

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Article 19

An endorsement in respect of a part of the sum due under the instrument is ineffective as an endorsement.

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Article 20

If there are two or more endorsements, it is presumed, unless the contrary is proved, that each endorsement was made in the order in which it appears on the instrument.

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132

Article 21

1. If an endorsement contains the words "for collection", "for deposit", "value in collection", "by procuration", "pay any bank", or words of similar import authorizing the endorsee to collect the instrument, the endorsee is a holder who:

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134

(a) May exercise all rights arising out of the instrument;

135

(b) May endorse the instrument only for purposes of collection;

136

(c) Is subject only to the claims and defences which may be set up against the endorser.

137

2. The endorser for collection is not liable on the instrument to any subsequent holder.

138

Article 22

139

1. If an endorsement contains the words "value in security", "value in pledge", or any other words indicating a pledge, the endorsee is a holder who:

140

(a) May exercise all rights arising out of the instrument;

141

(b) May endorse the instrument only for purposes of collection;

142

(c) Is subject only to the claims and defences specified in article 28 or article 30.

143

2. If such an endorsee endorses for collection, he is not liable on the instrument to any subsequent holder.

144

Article 23

145

The holder of an instrument may transfer it to a prior party or to the drawee in accordance with article` 13; however, if the transferee has previously been a holder of the instrument, no endorsement is required, and any endorsement which would prevent him from qualifying as a holder may be struck out.

Article 24

An instrument may be transferred in accordance with article` 13 after maturity, except by the drawee, the acceptor or the maker.

Article 25

1. If an endorsement is forged, the person whose endorsement is forged, or a party who signed the instrument before the forgery, has the right to recover compensation for any damage that he may have suffered because of the forgery against:

(a) The forger;

(b) The person to whom the instrument was directly transferred by the forger;

(c) A party or the drawee who paid the instrument to the forger directly or through one or more endorsees for collection.

2. However, an endorsee for collection is

not liable under paragraph` 1 of this article if he is without knowledge of the forgery:

(a) At the time he pays the principal or advises him of the receipt of payment; or

(b) At the time he receives payment, if this is later, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

3. Furthermore, a party or the drawee who pays an instrument is not liable under paragraph` 1 of this article if, at the time he pays the instrument, he is without knowledge of the forgery, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

4. Except as against the forger, the damages recoverable under paragraph` 1 of this article may not exceed the amount referred to in article` 70 or article` 71.

Article 26

1. If an endorsement is made by an agent without authority or power to bind his principal in the matter, the principal, or a party who signed the instrument before such endorsement, has the right to recover compensation for any damage that he may have

suffered because of such endorsement against:

(a) The agent;

(b) The person to whom the instrument was directly transferred by the agent;

(c) A party or the drawee who paid the instrument to the agent directly or through one or more endorsees for collection.

2. However, an endorsee for collection is not liable under paragraph` 1 of this article if he is without knowledge that the endorsement does not bind the principal:

(a) At the time he pays the principal or advises him of the receipt of payment; or

(b) At the time he receives payment, if this is later, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

3. Furthermore, a party or the drawee who pays an instrument is not liable under paragraph` 1 of this article if, at the time he pays the instrument, he is without knowledge that the endorsement does not bind the principal, unless his lack of knowledge is due to his failure to act in good faith or to exercise reasonable care.

4. Except as against the agent, the

damages recoverable under paragraph` 1 of this article may not exceed the amount referred to in article` 70 or article` 71.

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CHAPTER IV. - Rights And Liabilities

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Section 1. - The rights of a holder and of a protected holder

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Article 27

172

1. The holder of an instrument has all the rights conferred on him by this Convention against the parties to the instrument.

173

2. The holder may transfer the instrument in accordance with article 13.

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Article 28

175

1. A party may set up against a holder who is not a protected holder:

176

(a) Any defence that may be set up against a protected holder in accordance with paragraph` 1 of article 30;

177

(b) Any defence based on the underlying transaction between himself and the drawer or between himself and his transferee, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument

by fraud or theft or participated at any time in a fraud or theft concerning it;

(c) Any defence arising from the circumstances as a result of which he became a party, but only if the holder took the instrument with knowledge of such defence or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it;

(d) Any defence which may be raised against an action in contract between himself and the holder;

(e) Any other defence available under this Convention.

2. The rights to an instrument of a holder who is not a protected holder are subject to any valid claim to the instrument on the part of any person, but only if he took the instrument with knowledge of such claim or if he obtained the instrument by fraud or theft or participated at any time in a fraud or theft concerning it.

3. A holder who takes an instrument after the expiration of the time-limit for presentment for payment is subject to any claim to, or defence against liability on, the instrument to which his transferor is subject.

4. A party may not raise as a defence

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against a holder who is not a protected holder
the fact that a third person has a claim to the
instrument unless:

(a) The third person asserted a valid
claim to the instrument; or

(b) The holder acquired the instrument
by theft or forged the signature of the payee or
an endorsee, or participated in the theft or the
forgery.

Article 29

"Protected holder" means the holder of an
instrument which was complete when he took it
or which was incomplete within the meaning of
paragraph` 1 of article` 12 and was completed in
accordance with authority given, provided that
when he became a holder:

(a) He was without knowledge of a
defence against liability on the instrument
referred to in paragraphs` 1` (a), (b), (c) and (e)
of article` 28;

(b) He was without knowledge of a valid
claim to the instrument of any person;

(c) He was without knowledge of the fact
that it had been dishonoured by non-acceptance
or by non-payment;

(d) The time-limit provided by article` 55 for presentment of that instrument for payment had not expired;

(e) He did not obtain the instrument by fraud or theft or participate in a fraud or theft concerning it.

Article ` 30

1. A party may not set up against a protected holder any defence except:

(a) Defences under paragraph`1 of article` 33, article` 34, paragraph` 1 of article` 35, paragraph` 3 of article` 36, paragraph` 1 of article` 53, paragraph` 1 of article` 57, paragraph` 1 of article` 63 and article` 84 of this Convention;

(b) Defences based on the underlying transaction between himself and such holder or arising from any fraudulent act on the part of such holder in obtaining the signature on the instrument of that party;

(c) Defences based on his incapacity to incur liability on the instrument or on the fact that he signed without knowledge that his signature made him a party to the instrument, provided that his lack of knowledge was not due to his negligence and provided that he was

fraudulently induced so to sign.

2. The rights to an instrument of a protected holder are not subject to any claim to the instrument on the part of any person, except a valid claim arising from the underlying transaction between himself and the person by whom the claim is raised.

Article ` 31

1. The transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument which the protected holder had.

2. Those rights are not vested in a subsequent holder if:

(a) He participated in a transaction which gives rise to a claim to, or a defence against liability on, the instrument;

(b) He has previously been a holder, but not a protected holder.

Article ` 32

Every holder is presumed to be a protected holder unless the contrary is proved.

Section ` 2. - Liabilities of the parties

A. - General provisions

Article ` 33

1. Subject to the provisions of articles ` 34 and ` 36, a person is not liable on an instrument unless he signs it.

2. A person who signs an instrument in a name which is not his own is liable as if he had signed it in his own name.

Article ` 34

A forged signature on an instrument does not impose any liability on the person whose signature was forged. However, if he consents to be bound by the forged signature or represents that it is his own, he is liable as if he had signed the instrument himself.

Article ` 35

1. If an instrument is materially altered:

(a) A party who signs it after the material alteration is liable according to the terms of the altered text;

(b) A party who signs it before the material alteration is liable according to the terms of the original text. However, if a party makes, authorizes or assents to a material

alteration, he is liable according to the terms of the altered text.

2. A signature is presumed to have been placed on the instrument after the material alteration unless the contrary is proved.

3. Any alteration is material which modifies the written undertaking on the instrument of any party in any respect.

Article `36

1. An instrument may be signed by an agent.

2. The signature of an agent placed by him on an instrument with the authority of his principal and showing on the instrument that he is signing in a representative capacity for that named principal, or the signature of a principal placed on the instrument by an agent with his authority, imposes liability on the principal and not on the agent.

3. A signature placed on an instrument by a person as agent but who lacks authority to sign or exceeds his authority, or by an agent who has authority to sign but who does not show on the instrument that he is signing in a representative capacity for a named person, or who shows on the instrument that he is signing

in a representative capacity but does not name the person whom he represents, imposes liability on the person signing and not on the person whom he purports to represent.

4. The question whether a signature was placed on the instrument in a representative capacity may be determined only by reference to what appears on the instrument.

5. A person who is liable pursuant to paragraph`3 of this article and who pays the instrument has the same rights as the person for whom he purported to act would have had if that person had paid the instrument.

Article `37

The order to pay contained in a bill does not of itself operate as an assignment to the payee of funds made available for payment by the drawer with the drawee.

B. - The drawer

Article `38

1. The drawer engages that upon dishonour of the bill by non-acceptance or by non-payment, and upon any necessary protest, he will pay the bill to the holder, or to any endorser or any endorser's guarantor who takes

up and pays the bill.

2. The drawer may exclude or limit his own liability for acceptance or for payment by an express stipulation in the bill. Such a stipulation is effective only with respect to the drawer. A stipulation excluding or limiting liability for payment is effective only if another party is or becomes liable on the bill.

C. - The maker

Article ` 39

1. The maker engages that he will pay the note in accordance with its terms to the holder, or to any party who takes up and pays the note.

2. The maker may not exclude or limit his own liability by a stipulation in the note. Any such stipulation is ineffective.

D. - The drawee and the acceptor

Article ` 40

1. The drawee is not liable on a bill until he accepts it.

2. The acceptor engages that he will pay the bill in accordance with the terms of his

acceptance to the holder, or to any party who takes up and pays the bill.

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Article `41

1. An acceptance must be written on the bill and may be effected:

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(a) By the signature of the drawee accompanied by the word "accepted" or by words of similar import; or

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(b) By the signature alone of the drawee.

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2. An acceptance may be written on the front or on the back of the bill.

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Article `42

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1. An incomplete bill which satisfies the requirements set out in paragraph `1 of article `1 may be accepted by the drawee before it has been signed by the drawer, or while otherwise incomplete.

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2. A bill may be accepted before, at or after maturity, or after it has been dishonoured by non-acceptance or by non-payment.

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3. If a bill drawn payable at a fixed period after sight, or a bill which must be presented for acceptance before a specified date, is accepted, the acceptor must indicate the date of his acceptance; failing such indication by the

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acceptor, the drawer or the holder may insert the date of acceptance.

4. If a bill drawn payable at a fixed period after sight is dishonoured by non-acceptance and the drawee subsequently accepts it, the holder is entitled to have the acceptance dated as of the date on which the bill was dishonoured.

Article ` 43

1. An acceptance must be unqualified. An acceptance is qualified if it is conditional or varies the terms of the bill.

2. If the drawee stipulates in the bill that his acceptance is subject to qualification:

(a) He is nevertheless bound according to the terms of his qualified acceptance;

(b) The bill is dishonoured by non-acceptance.

3. An acceptance relating to only a part of the sum payable is a qualified acceptance. If the holder takes such an acceptance, the bill is dishonoured by non-acceptance only as to the remaining part.

4. An acceptance indicating that payment will be made at a particular address or by a particular agent is not a qualified acceptance,

provided that:

(a) The place in which payment is to be made is not changed;

(b) The bill is not drawn payable by another agent.

E. - The endorser

Article `44

1. The endorser engages that upon dishonour of the instrument by non-acceptance or by non-payment, and upon any necessary protest, he will pay the instrument to the holder, or to any subsequent endorser or any endorser's guarantor who takes up and pays the instrument.

2. An endorser may exclude or limit his own liability by an express stipulation in the instrument. Such a stipulation is effective only with respect to that endorser.

F. - The transferor by endorsement or by mere delivery

Article `45

1. Unless otherwise agreed, a person who transfers an instrument, by endorsement and

delivery or by mere delivery, represents to the holder to whom he transfers the instrument that:

(a) The instrument does not bear any forged or unauthorized signature;

(b) The instrument has not been materially altered;

(c) At the time of transfer, he has no knowledge of any fact which would impair the right of the transferee to payment of the instrument against the acceptor of a bill or, in the case of an unaccepted bill, the drawer, or against the maker of a note.

2. Liability of the transferor under paragraph` 1 of this article is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.

3. If the transferor is liable under paragraph` 1 of this article, the transferee may recover, even before maturity, the amount paid by him to the transferor, with interest calculated in accordance with article` 70, against return of the instrument.

G. - The guarantor

Article ` 46

1. Payment of an instrument, whether or not it has been accepted, may be guaranteed, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person, who may or may not already be a party.

2. A guarantee must be written on the instrument or on a slip affixed thereto ("allonge").

3. A guarantee is expressed by the words "guaranteed", "aval", "good as aval" or words of similar import, accompanied by the signature of the guarantor. For the purposes of this Convention, the words "prior endorsements guaranteed" or words of similar import do not constitute a guarantee.

4. A guarantee may be effected by a signature alone on the front of the instrument. A signature alone on the front of the instrument, other than that of the maker, the drawer or the drawee, is a guarantee.

5. A guarantor may specify the person for whom he has become guarantor. In the absence of such specification, the person for whom he has become guarantor is the acceptor or the

drawee in the case of a bill, and the maker in the case of a note.

6. A guarantor may not raise as a defence to his liability the fact that he signed the instrument before it was signed by the person for whom he is a guarantor, or while the instrument was incomplete.

Article `47

1. The liability of a guarantor on the instrument is of the same nature as that of the party for whom he has become guarantor.

2. If the person for whom he has become guarantor is the drawee, the guarantor engages:

(a) To pay the bill at maturity to the holder, or to any party who takes up and pays the bill;

(b) If the bill is payable at a definite time, upon dishonour by non-acceptance and upon any necessary protest, to pay it to the holder, or to any party who takes up and pays the bill.

3. In respect of defences that are personal to himself, a guarantor may set up:

(a) Against a holder who is not a protected holder only those defences which he

may set up under paragraphs`1, 3 and`4 of article`28;

(b) Against a protected holder only those defences which he may set up under paragraph`1 of article`30.

4. In respect of defences that may be raised by the person for whom he has become a guarantor:

(a) A guarantor may set up against a holder who is not a protected holder only those defences which the person for whom he has become a guarantor may set up against such holder under paragraphs`1, 3 and`4 of article`28;

(b) A guarantor who expresses his guarantee by the words "guaranteed", "payment guaranteed" or "collection guaranteed", or words of similar import, may set up against a protected holder only those defences which the person for whom he has become a guarantor may set up against a protected holder under paragraph`1 of article`30;

(c) A guarantor who expresses his guarantee by the words "aval" or "good as aval" may set up against a protected holder only:

(i) The defence, under paragraph`1` (b)

of article` 30, that the protected holder obtained the signature on the instrument of the person for whom he has become a guarantor by a fraudulent act;

(ii) The defence, under article` 53 or` article` 57, that the instrument was not presented for acceptance or for payment;

(iii) The defence, under article` 63, that the instrument was not duly protested for non-acceptance or for non-payment;

(iv) The defence, under article` 84, that a right of action may no longer be exercised against the person for whom he has become guarantor;

(d) A guarantor who is not a bank or other financial institution and who expresses his guarantee by a signature alone may set up against a protected holder only the defences referred to in subparagraph`(b) of this paragraph;

(e) A guarantor which is a bank or other financial institution and which expresses its guarantee by a signature alone may set up against a protected holder only the defences referred to in subparagraph`(c) of this paragraph.

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Article `48

1. Payment of an instrument by the guarantor in accordance with article`72 discharges the party for whom he became guarantor of his liability on the instrument to the extent of the amount paid.

2. The guarantor who pays the instrument may recover from the party for whom he has become guarantor and from the parties who are liable on it to that party the amount paid and any interest.

**CHAPTER `V. - Presentment,
Dishonour By Non-Acceptance Or
Non-Payment, And Recourse****Section `1. - Presentment for
acceptance and dishonour by non-
acceptance****Article `49**

1. A bill may be presented for acceptance.

2. A bill must be presented for acceptance:

(a) If the drawer has stipulated in the bill that it must be presented for acceptance;

(b) If the bill is payable at a fixed period after sight; or

(c) If the bill is payable elsewhere than at the residence or place of business of the drawee, unless it is payable on demand.

Article ` 50

1. The drawer may stipulate in the bill that it must not be presented for acceptance before a specified date or before the occurrence of a specified event. Except where a bill must be presented for acceptance under paragraph ` 2` (b) or ` (c) of article ` 49, the drawer may stipulate that it must not be presented for acceptance.

2. If a bill is presented for acceptance notwithstanding a stipulation permitted under paragraph ` 1 of this article and acceptance is refused, the bill is not thereby dishonoured.

3. If the drawee accepts a bill notwithstanding a stipulation that it must not be presented for acceptance, the acceptance is effective.

Article ` 51

A bill is duly presented for acceptance if it is presented in accordance with the following

rules:

(a) The holder must present the bill to the drawee on a business day at a reasonable hour;

(b) Presentment for acceptance may be made to a person or authority other than the drawee if that person or authority is entitled under the applicable law to accept the bill;

(c) If a bill is payable on a fixed date, presentment for acceptance must be made before or on that date;

(d) A bill payable on demand or at a fixed period after sight must be presented for acceptance within one year of its date;

(e) A bill in which the drawer has stated a date or time-limit for presentment for acceptance must be presented on the stated date or within the stated time-limit.

Article ` 52

1. A necessary or optional presentment for acceptance is dispensed with if:

(a) The drawee is dead, or no longer has the power freely to deal with his assets by reason of his insolvency, or is a fictitious person, or is a person not having capacity to incur

liability on the instrument as an acceptor; or

(b) The drawee is a corporation, partnership, association or other legal entity which has ceased to exist.

2. A necessary presentment for acceptance is dispensed with if:

(a) A bill is payable on a fixed date, and presentment for acceptance cannot be effected before or on that date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome; or

(b) A bill is payable at a fixed period after sight, and presentment for acceptance cannot be effected within one year of its date due to circumstances which are beyond the control of the holder and which he could neither avoid nor overcome.

3. Subject to paragraphs` 1 and` 2 of this article, delay in a necessary presentment for acceptance is excused, but presentment for acceptance is not dispensed with, if the bill is drawn with a stipulation that it must be presented for acceptance within a stated time-limit, and the delay in presentment for acceptance is caused by circumstances which are beyond the control of the holder and which he

could neither avoid nor overcome. When the cause of the delay ceases to operate, presentment must be made with reasonable diligence.

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Article ` 53

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1. If a bill which must be presented for acceptance is not so presented, the drawer, the endorsers and their guarantors are not liable on the bill.

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2. Failure to present a bill for acceptance does not discharge the guarantor of the drawee of liability on the bill.

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Article ` 54

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1. A bill is considered to be dishonoured by non-acceptance:

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(a) If the drawee, upon due presentment, expressly refuses to accept the bill or acceptance cannot be obtained with reasonable diligence or if the holder cannot obtain the acceptance to which he is entitled under this Convention;

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(b) If presentment for acceptance is dispensed with pursuant to article ` 52, unless the bill is in fact accepted.

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2. (a) If a bill is dishonoured by non-

acceptance in accordance with paragraph `1` (a) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors, subject to the provisions of article `59.

(b) If a bill is dishonoured by non-acceptance in accordance with paragraph `1` (b) of this article, the holder may exercise an immediate right of recourse against the drawer, the endorsers and their guarantors.

(c) If a bill is dishonoured by non-acceptance in accordance with paragraph `1` of this article, the holder may claim payment from the guarantor of the drawee upon any necessary protest.

3. If a bill payable on demand is presented for acceptance, but acceptance is refused, it is not considered to be dishonoured by non-acceptance.

Section `2. - Presentment for payment and dishonour by non-payment

Article `55

An instrument is duly presented for payment if it is presented in accordance with the following rules:

(a) The holder must present the instrument to the drawee or to the acceptor or to the maker on a business day at a reasonable hour;

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(b) A note signed by two or more makers may be presented to any one of them, unless the note clearly indicates otherwise;

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(c) If the drawee or the acceptor or the maker is dead, presentment must be made to the persons who under the applicable law are his heirs or the persons entitled to administer his estate;

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(d) Presentment for payment may be made to a person or authority other than the drawee, the acceptor or the maker if that person or authority is entitled under the applicable law to pay the instrument;

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(e) An instrument which is not payable on demand must be presented for payment on the date of maturity or on one of the two business days which follow;

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(f) An instrument which is payable on demand must be presented for payment within one year of its date;

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(g) An instrument must be presented for payment:

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(i) At the place of payment specified on the instrument;

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(ii) If no place of payment is specified, at the address of the drawee or the acceptor or the maker indicated in the instrument; or

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(iii) If no place of payment is specified and the address of the drawee or the acceptor or the maker is not indicated, at the principal place of business or habitual residence of the drawee or the acceptor or the maker;

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(h) An instrument which is presented at a clearing-house is duly presented for payment if the law of the place where the clearing-house is located or the rules or customs of that clearing-house so provide.

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Article ` 56

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1. Delay in making presentment for payment is excused if the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, presentment must be made with reasonable diligence.

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2. Presentment for payment is dispensed with:

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(a) If the drawer, an endorser or a guarantor has expressly waived presentment; such waiver:

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(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

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(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

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(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;

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(b) If an instrument is not payable on demand, and the cause of delay in making presentment referred to in paragraph`1 of this article continues to operate beyond thirty`days after maturity;

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(c) If an instrument is payable on demand, and the cause of delay in making presentment referred to in paragraph`1 of this article continues to operate beyond thirty`days after the expiration of the time-limit for presentment for payment;

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(d) If the drawee, the maker or the acceptor has no longer the power freely to deal with his assets by reason of his insolvency, or is

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a fictitious person or a person not having capacity to make payment, or if the drawee, the maker or the acceptor is a corporation, partnership, association or other legal entity which has ceased to exist;

(e) If there is no place at which the instrument must be presented in accordance with subparagraph (g) of article 55.

3. Presentment for payment is also dispensed with as regards a bill, if the bill has been protested for dishonour by non-acceptance.

Article 57

1. If an instrument is not duly presented for payment, the drawer, the endorsers and their guarantors are not liable on it.

2. Failure to present an instrument for payment does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

Article 58

1. An instrument is considered to be dishonoured by non-payment:

(a) If payment is refused upon due presentment or if the holder cannot obtain the payment to which he is entitled under this

Convention;

(b) If presentment for payment is dispensed with pursuant to paragraph`2 of article`56 and the instrument is unpaid at maturity.

2. If a bill is dishonoured by non-payment, the holder may, subject to the provisions of article`59, exercise a right of recourse against the drawer, the endorsers and their guarantors.

3. If a note is dishonoured by non-payment, the holder may, subject to the provisions of article`59, exercise a right of recourse against the endorsers and their guarantors.

Section `3. - Recourse

Article `59

If an instrument is dishonoured by non-acceptance or by non-payment, the holder may exercise a right of recourse only after the instrument has been duly protested for dishonour in accordance with the provisions of articles`60 to`62.

A. - Protest

Article 60

1. A protest is a statement of dishonour drawn up at the place where the instrument has been dishonoured and signed and dated by a person authorized in that respect by the law of that place. The statement must specify:

(a) The person at whose request the instrument is protested;

(b) The place of protest;

(c) The demand made and the answer given, if any, or the fact that the drawee or the acceptor or the maker could not be found.

2. A protest may be made:

(a) On the instrument or on a slip affixed thereto ("allonge"); or

(b) As a separate document, in which case it must clearly identify the instrument that has been dishonoured.

3. Unless the instrument stipulates that protest must be made, a protest may be replaced by a declaration written on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person; the declaration

must be to the effect that acceptance or payment is refused.

4. A declaration made in accordance with paragraph 3 of this article is a protest for the purpose of this Convention.

Article 61

Protest for dishonour of an instrument by non-acceptance or by non-payment must be made on the day on which the instrument is dishonoured or on one of the four business days which follow.

Article 62

1. Delay in protesting an instrument for dishonour is excused if the delay is caused by circumstances which are beyond the control of the holder and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, protest must be made with reasonable diligence.

2. Protest for dishonour by non-acceptance or by non-payment is dispensed with:

(a) If the drawer, an endorser or a guarantor has expressly waived protest; such waiver:

(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

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(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

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(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;

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(b) If the cause of the delay in making protest referred to in paragraph` 1 of this article continues to operate beyond thirty` days after the date of dishonour;

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(c) As regards the drawer of a bill, if the drawer and the drawee or the acceptor are the same person;

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(d) If presentment for acceptance or for payment is dispensed with in accordance with article` 52 or paragraph` 2 of article` 56.

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Article 63

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1. If an instrument which must be protested for non-acceptance or for non-payment is not duly protested, the drawer, the endorsers and their guarantors are not liable on it.

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2. Failure to protest an instrument does not discharge the acceptor, the maker and their guarantors or the guarantor of the drawee of liability on it.

B. - Notice of dishonour

Article 64

1. The holder, upon dishonour of an instrument by non-acceptance or by non-payment, must give notice of such dishonour:

(a) To the drawer and the last endorser;

(b) To all other endorsers and guarantors whose addresses the holder can ascertain on the basis of information contained in the instrument.

2. An endorser or a guarantor who receives notice must give notice of dishonour to the last party preceding him and liable on the instrument.

3. Notice of dishonour operates for the benefit of any party who has a right of recourse on the instrument against the party notified.

Article 65

1. Notice of dishonour may be given in any form whatever and in any terms which identify the instrument and state that it has

been dishonoured. The return of the dishonoured instrument is sufficient notice, provided it is accompanied by a statement indicating that it has been dishonoured.

2. Notice of dishonour is duly given if it is communicated or sent to the party to be notified by means appropriate in the circumstances, whether or not it is received by that party.

3. The burden of proving that notice has been duly given rests upon the person who is required to give such notice.

Article 66

Notice of dishonour must be given within the two business days which follow:

(a) The day of protest or, if protest is dispensed with, the day of dishonour; or

(b) The day of receipt of notice of dishonour.

Article 67.

1. Delay in giving notice of dishonour is excused if the delay is caused by circumstances which are beyond the control of the person required to give notice, and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, notice must be

given with reasonable diligence.

2. Notice of dishonour is dispensed with:

(a) If, after the exercise of reasonable diligence, notice cannot be given;

(b) If the drawer, an endorser or a guarantor has expressly waived notice of dishonour; such waiver:

(i) If made on the instrument by the drawer, binds any subsequent party and benefits any holder;

(ii) If made on the instrument by a party other than the drawer, binds only that party but benefits any holder;

(iii) If made outside the instrument, binds only the party making it and benefits only a holder in whose favour it was made;

(c) As regards the drawer of the bill, if the drawer and the drawee or the acceptor are the same person.

Article 68

If a person who is required to give notice of dishonour fails to give it to a party who is entitled to receive it, he is liable for any damages which that party may suffer from such failure, provided that such damages do not

exceed the amount referred to in article` 70 or article` 71.

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Section 4. - Amount payable

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Article 69

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1. The holder may exercise his rights on the instrument against any one party, or several or all parties, liable on it and is not obliged to observe the order in which the parties have become bound. Any party who takes up and pays the instrument may exercise his rights in the same manner against parties liable to him.

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2. Proceedings against a party do not preclude proceedings against any other party, whether or not subsequent to the party originally proceeded against.

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Article 70

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1. The holder may recover from any party liable:

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(a) At maturity: the amount of the instrument with interest, if interest has been stipulated for;

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(b) After maturity:

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(i) The amount of the instrument with interest, if interest has been stipulated for, to

the date of maturity;

(ii) If interest has been stipulated to be paid after maturity, interest at the rate stipulated, or, in the absence of such stipulation, interest at the rate specified in paragraph` 2 of this article, calculated from the date of presentment on the sum specified in subparagraph` (b) (i) of this paragraph;

(iii) Any expenses of protest and of the notices given by him;

(c) Before maturity:

(i) The amount of the instrument with interest, if interest has been stipulated for, to the date of payment; or, if no interest has been stipulated for, subject to a discount from the date of payment to the date of maturity, calculated in accordance with paragraph` 4 of this article;

(ii) Any expenses of protest and of the notices given by him.

2. The rate of interest shall be the rate that would be recoverable in legal proceedings taken in the jurisdiction where the instrument is payable.

3. Nothing in paragraph` 2 of this article

prevents a court from awarding damages or compensation for additional loss caused to the holder by reason of delay in payment.

4. The discount shall be at the official rate (discount rate) or other similar appropriate rate effective on the date when recourse is exercised at the place where the holder has his principal place of business, or, if he does not have a place of business, his habitual residence, or, if there is no such rate, then at such rate as is reasonable in the circumstances.

Article 71

A party who pays an instrument and is thereby discharged in whole or in part of his liability on the instrument may recover from the parties liable to him:

(a) The entire sum which he has paid;

(b) Interest on that sum at the rate specified in paragraph` 2 of article` 70, from the date on which he made payment;

(c) Any expenses of the notices given by him.

CHAPTER VI. - Discharge

Section 1. - Discharge by payment

Article 72

1. A party is discharged of liability on the instrument when he pays the holder, or a party subsequent to himself who has paid the instrument and is in possession of it, the amount due pursuant to article` 70 or article` 71:

(a) At or after maturity; or

(b) Before maturity, upon dishonour by non-acceptance.

2. Payment before maturity other than under paragraph` 1`(b) of this article does not discharge the party making the payment of his liability on the instrument except in respect of the person to whom payment was made.

3. A party is not discharged of liability if he pays a holder who is not a protected holder, or a party who has taken up and paid the instrument, and knows at the time of payment that the holder or that party acquired the instrument by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

4. (a) A person receiving payment of an instrument must, unless agreed otherwise, deliver:

(i) To the drawee making such payment, the instrument;

(ii) To any other person making such payment, the instrument, a receipted account, and any protest.

(b) In the case of an instrument payable by instalments at successive dates, the drawee or a party making a payment, other than payment of the last instalment, may require that mention of such payment be made on the instrument or on a slip affixed thereto ("allonge") and that a receipt therefor be given to him.

(c) If an instrument payable by instalments at successive dates is dishonoured by non-acceptance or by non-payment as to any of its instalments and a party, upon dishonour, pays the instalment, the holder who receives such payment must give the party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.

(d) The person from whom payment is demanded may withhold payment if the person demanding payment does not deliver the instrument to him. Withholding payment in these circumstances does not constitute dishonour by

non-payment under article` 58.

(e) If payment is made but the person paying, other than the drawee, fails to obtain the instrument, such person is discharged but the discharge cannot be set up as a defence against a protected holder to whom the instrument has been subsequently transferred.

Article 73

1. The holder is not obliged to take partial payment.

2. If the holder who is offered partial payment does not take it, the instrument is dishonoured by non-payment.

3. If the holder takes partial payment from the drawee, the guarantor of the drawee, or the acceptor or the maker:

(a) The guarantor of the drawee, or the acceptor or the maker is discharged of his liability on the instrument to the extent of the amount paid;

(b) The instrument is to be considered as dishonoured by non-payment as to the amount unpaid.

4. If the holder takes partial payment from a party to the instrument other than the

acceptor, the maker or the guarantor of the drawee:

(a) The party making payment is discharged of his liability on the instrument to the extent of the amount paid;

(b) The holder must give such party a certified copy of the instrument and any necessary authenticated protest in order to enable such party to exercise a right on the instrument.

5. The drawee or a party making partial payment may require that mention of such payment be made on the instrument and that a receipt therefor be given to him.

6. If the balance is paid, the person who receives it and who is in possession of the instrument must deliver to the payor the receipted instrument and any authenticated protest.

Article 74

1. The holder may refuse to take payment at a place other than the place where the instrument was presented for payment in accordance with article` 55.

2. In such case if payment is not made at the place where the instrument was presented

for payment in accordance with article` 55, the instrument is considered to be dishonoured by non-payment.

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Article 75

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1. An instrument must be paid in the currency in which the sum payable is expressed.

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2. If the sum payable is expressed in a monetary unit of account within the meaning of subparagraph` (l) of article` 5 and the monetary unit of account is transferable between the person making payment and the person receiving it, then, unless the instrument specifies a currency of payment, payment shall be made by transfer of monetary units of account. If the monetary unit of account is not transferable between those persons, payment shall be made in the currency specified in the instrument or, if no such currency is specified, in the currency of the place of payment.

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3. The drawer or the maker may indicate in the instrument that it must be paid in a specified currency other than the currency in which the sum payable is expressed. In that case:

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(a) The instrument must be paid in the currency so specified;

(b) The amount payable is to be calculated according to the rate of exchange indicated in the instrument. Failing such indication, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of maturity:

(i) Ruling at the place where the instrument must be presented for payment in accordance with subparagraph` (g) of article` 55, if the specified currency is that of that place (local currency); or

(ii) If the specified currency is not that of that place, according to the usages of the place where the instrument must be presented for payment in accordance with subparagraph` (g) of article` 55;

(c) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated:

(i) If the rate of exchange is indicated in the instrument, according to that rate;

(ii) If no rate of exchange is indicated in the instrument, at the option of the holder, according to the rate of exchange ruling on the

date of dishonour or on the date of actual payment;

(d) If such an instrument is dishonoured by non-payment, the amount payable is to be calculated:

(i) If the rate of exchange is indicated in the instrument, according to that rate;

(ii) If no rate of exchange is indicated in the instrument, at the option of the holder, according to the rate of exchange ruling on the date of maturity or on the date of actual payment.

4. Nothing in this article prevents a court from awarding damages for loss caused to the holder by reason of fluctuations in rates of exchange if such loss is caused by dishonour for non-acceptance or by non-payment.

5. The rate of exchange ruling at a certain date is the rate of exchange ruling, at the option of the holder, at the place where the instrument must be presented for payment in accordance with subparagraph (g) of article 55 or at the place of actual payment.

Article 76

1. Nothing in this Convention prevents a Contracting State from enforcing exchange

control regulations applicable in its territory and its provisions relating to the protection of its currency, including regulations which it is bound to apply by virtue of international agreements to which it is a party.

2.

(a) If, by virtue of the application of paragraph` 1 of this article, an instrument drawn in a currency which is not that of the place of payment must be paid in local currency, the amount payable is to be calculated according to the rate of exchange for sight drafts (or, if there is no such rate, according to the appropriate established rate of exchange) on the date of presentment ruling at the place where the instrument must be presented for payment in accordance with subparagraph` (g) of article` 55.

(b) (i) If such an instrument is dishonoured by non-acceptance, the amount payable is to be calculated, at the option of the holder, at the rate of exchange ruling on the date of dishonour or on the date of actual payment.

(ii) If such an instrument is dishonoured by non-payment, the amount is to be calculated, at the option of the holder, according to the rate of exchange ruling on the date of presentment or

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on the date of actual payment.

(iii) Paragraphs` 4 and` 5 of article` 75
are applicable where appropriate.

Section 2. - Discharge of other parties

Article 77

1. If a party is discharged in whole or in part of his liability on the instrument, any party who has a right on the instrument against him is discharged to the same extent.

2. Payment by the drawee of the whole or a part of the amount of a bill to the holder, or to any party who takes up and pays the bill, discharges all parties of their liability to the same extent, except where the drawee pays a holder who is not a protected holder, or a party who has taken up and paid the bill, and knows at the time of payment that the holder or that party acquired the bill by theft or forged the signature of the payee or an endorsee, or participated in the theft or the forgery.

CHAPTER VII. - Lost Instruments

Article 78

1. If an instrument is lost, whether by

destruction, theft or otherwise, the person who lost the instrument has, subject to the provisions of paragraph` 2 of this article, the same right to payment which he would have had if he had been in possession of the instrument. The party from whom payment is claimed cannot set up as a defence against liability on the instrument the fact that the person claiming payment is not in possession of the instrument.

2.

(a) The person claiming payment of a lost instrument must state in writing to the party from whom he claims payment:

(i) The elements of the lost instrument pertaining to the requirements set forth in paragraph` 1 or paragraph` 2 of articles` 1, 2 and` 3; for this purpose the person claiming payment of the lost instrument may present to that party a copy of that instrument;

(ii) The facts showing that, if he had been in possession of the instrument, he would have had a right to payment from the party from whom payment is claimed;

(iii) The facts which prevent production of the instrument.

(b) The party from whom payment of a

lost instrument is claimed may require the person claiming payment to give security in order to indemnify him for any loss which he may suffer by reason of the subsequent payment of the lost instrument.

(c) The nature of the security and its terms are to be determined by agreement between the person claiming payment and the party from whom payment is claimed. Failing such an agreement, the court may determine whether security is called for and, if so, the nature of the security and its terms.

(d) If the security cannot be given, the court may order the party from whom payment is claimed to deposit the sum of the lost instrument, and any interest and expenses which may be claimed under article`70 or article`71, with the court or any other competent authority or institution, and may determine the duration of such deposit. Such deposit is to be considered as payment to the person claiming payment.

Article 79

1. A party who has paid a lost instrument and to whom the instrument is subsequently presented for payment by another person must give notice of such presentment to the person whom he paid.

2. Such notice must be given on the day the instrument is presented or on one of the two business days which follow and must state the name of the person presenting the instrument and the date and place of presentment.

3. Failure to give notice renders the party who has paid the lost instrument liable for any damages which the person whom he paid may suffer from such failure, provided that the damages do not exceed the amount referred to in article` 70 or article` 71.

4. Delay in giving notice is excused when the delay is caused by circumstances which are beyond the control of the person who has paid the lost instrument and which he could neither avoid nor overcome. When the cause of the delay ceases to operate, notice must be given with reasonable diligence.

5. Notice is dispensed with when the cause of delay in giving notice continues to operate beyond thirty` days after the last day on which it should have been given.

Article 80

1. A party who has paid a lost instrument in accordance with the provisions of article` 78 and who is subsequently required to, and does,

pay the instrument, or who, by reason of the loss of the instrument, then loses his right to recover from any party liable to him, has the right:

(a) If security was given, to realize the security; or

(b) If an amount was deposited with the court or other competent authority or institution, to reclaim the amount so deposited.

2. The person who has given security in accordance with the provisions of paragraph`2`(b) of article`78` is entitled to obtain release of the security when the party for whose benefit the security was given is no longer at risk to suffer loss because of the fact that the instrument is lost.

Article 81

For the purpose of making protest for dishonour by non-payment, a person claiming payment of a lost instrument may use a written statement that satisfies the requirements of paragraph`2`(a) of article`78`.

Article 82

A person receiving payment of a lost instrument in accordance with article`78` must deliver to the party paying the written statement

required under paragraph`2`(a) of article`78,
received by him, and any protest and a
received account.

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Article 83

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1. A party who pays a lost instrument in
accordance with article`78 has the same rights
which he would have had if he had been in
possession of the instrument.

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2. Such party may exercise his rights only
if he is in possession of the receipted written
statement referred to in article`82.

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CHAPTER VIII. - Limitation (Prescription)

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Article 84

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1. A right of action arising on an
instrument may no longer be exercised after four
years have elapsed:

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(a) Against the maker, or his guarantor,
of a note payable on demand, from the date of
the note;

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(b) Against the acceptor or the maker or
their guarantor of an instrument payable at a
definite time, from the date of maturity;

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(c) Against the guarantor of the drawee

of a bill payable at a definite time, from the date of maturity or, if the bill is dishonoured by non-acceptance, from the date of protest for dishonour or, where protest is dispensed with, from the date of dishonour;

(d) Against the acceptor of a bill payable on demand or his guarantor, from the date on which it was accepted or, if no such date is shown, from the date of the bill;

(e) Against the guarantor of the drawee of a bill payable on demand, from the date on which he signed the bill or, if no such date is shown, from the date of the bill;

(f) Against the drawer or an endorser or their guarantor, from the date of protest for dishonour by non-acceptance or by non-payment or, where protest is dispensed with, from the date of dishonour.

2. A party who pays the instrument in accordance with article`70 or article`71 may exercise his right of action against a party liable to him within one year from the date on which he paid the instrument.

CHAPTER IX. - Final Provisions

Article 85

The Secretary-General of the United Nations is hereby designated as the Depositary for this Convention.

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Article 86

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1. This Convention is open for signature by all States at the Headquarters of the United Nations, New York, until 30` June` 1990.

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2. This Convention is subject to ratification, acceptance or approval by the signatory States.

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3. This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

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4. Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

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Article 87

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1. If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting

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another declaration at any time.

2. These declarations are to be notified to the Depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Contracting State makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 88

1. Any State may declare at the time of signature, ratification, acceptance, approval or accession that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States.

2. No other reservations are permitted.

Article 89

1. This Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the

deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention enters into force in respect of that State on the first day of the month following the expiration of twelve months after the date of deposit of its instrument of ratification, acceptance, approval or accession.

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Article 90

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1. A Contracting State may denounce this Convention by a formal notification in writing addressed to the Depositary.

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2. The denunciation takes effect on the first day of the month following the expiration of six months after the notification is received by the Depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the Depositary. The Convention remains applicable to instruments drawn or made before the date at which the denunciation takes effect.

[Post Provisions]

[Post Clauses (If any: Signed; Witnessed; Done; Authentic Texts; & Deposited Clauses)]

DONE at New York, this ninth day of

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December, one thousand nine hundred and eighty-eight, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

**Annex - Explanatory Note by the
UNCITRAL Secretariat on the United
Nations Convention on International
Bills of Exchange and International
Promissory Notes *[NOTE]**

Introduction

1. The United Nations Convention on International Bills of Exchange and International Promissory Notes is the culmination of over fifteen years of work by the United Nations Commission on International Trade Law (UNCITRAL). It was adopted by the General Assembly of the United Nations under recommendation of the Sixth (Legal) Committee on 9 December 1988.

2. The Convention presents, for optional use in international transactions, a modern, comprehensive set of rules for international bills

of exchange and international promissory notes that satisfy its requisites of form. The text of the Convention reflects a deliberate policy to minimize departures from the content of the two existing principal legal systems, preserving, where possible, the rules on which those systems concur. Where conflicts exist, requiring selection of one system's rule or a compromise solution, the Convention introduces a number of novel provisions. Another group of new rules are the result of special efforts to have the Convention respond to modern commercial needs and banking and financial market practices.

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3. The Convention is divided into nine chapters. Chapter one deals with the sphere of application of the Convention and the form of the instrument covered by it. Chapter two contains definitions and other general provisions, including rules on the interpretation of various formal requirements. Chapter three addresses questions relating to the transfer of an instrument. The fourth chapter covers the rights and liabilities of parties to, and holders of, an instrument. The fifth chapter addresses issues relating to presentment of an instrument, dishonour by non-acceptance or non-payment, and the conditions precedent to parties' rights of

recourse. The sixth chapter deals with the discharge of liability on an instrument. Chapters seven and eight deal with lost instruments and limitation of actions (prescription). Lastly, the final provisions are found in chapter nine.

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A. - Background To The Convention

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4. The United Nations Convention on International Bills of Exchange and International Promissory Notes is the result of a movement to establish a modern, self-contained international legal regime that would apply world-wide.

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5. At its very first session held in 1968, UNCITRAL decided that, along with international sale of goods and international commercial arbitration, international payments should be given priority in its programme of future work. It was thought to be necessary to support the continued use of bills of exchange and promissory notes for international payments despite the emergence of new payment mechanisms. The new practices and techniques, it was thought, would not displace the more conventional usages, especially in the important role of financing international transactions.

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7. The first step taken by UNCITRAL was to consult with the International Institute for the Unification of Private Law (UNIDROIT) which had

previously addressed the subject of unification of the law relating to negotiable instruments. At the request of the Commission, UNIDROIT prepared a preliminary report on the possibilities of extending the unification of the law of bills of exchange and cheques. In the light of this report the Commission considered three possible methods of promoting unification. These were, firstly: encouraging a wider acceptance of the Geneva Conventions of 1930 and 1931; secondly, revising the Geneva Conventions of 1930 and 1931 with a view to making them more acceptable to countries following the Anglo-American system; and, lastly, creating a new negotiable instruments law. The discussions showed that the method most likely to succeed would be the creation of a new negotiable instruments law. It was felt that merely revising the Geneva Conventions would not make them acceptable to common law States.

8. Before resolving to begin the preparation of a new negotiable instruments law the Commission decided to conduct an extensive enquiry to obtain the views and suggestions of Governments, banks and trading institutions. The Commission prepared and distributed an elaborate questionnaire and analysed the replies given by respondents regarding the present

methods and practice for making and receiving international payments, the problems encountered in settling international transactions by means of negotiable instruments and the possible extent of new uniform law. From this analysis it became clear that the only viable approach would be to prepare a new set of rules that would be applicable to a special negotiable instrument for optional use in international transactions.

9. The secretariat of UNCITRAL first prepared a draft Uniform Law on International Bills of Exchange and a Commentary. The draft was later extended to include international promissory notes. The draft was revised over fourteen sessions of the Working Group on International Negotiable Instruments and three sessions of the Commission itself. At the fifth session of the Working Group it was decided to set forth the new provisions in the form of a convention rather than a uniform law.

10. The Convention as adopted aims at facilitating international trade and finance. Throughout the legislative process, attention was constantly given to the comments and observations of Governments, banks, trading and other interested circles.

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11. The Convention does not purport to replace existing domestic legislation. It presents for optional use in international transactions a comprehensive body of rules that are theoretically and practically sound, being derived from a coherent set of principles fundamental to all known laws governing bills of exchange and promissory notes.

B. - Salient Features Of The Convention

1. Scope of application and form of the instrument

12. The Convention applies only to international bills of exchange and international promissory notes when they comply with certain requisites of form. In particular, the Convention applies only to international instruments that bear in both their heading and their text the words "International bill of exchange (UNCITRAL Convention)" or "International promissory note (UNCITRAL Convention)". The use of an instrument governed by the Convention is thus entirely optional. Ratification or accession by a State does not subject all international instruments issued in that State to the legal regime of the Convention but merely opens the door for bankers and merchants to opt for this

new legal regime if they deem it preferable in their professional judgment.

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13. The Convention provides its own definitions of the terms "bill of exchange" and "promissory note" and explicitly states the conditions on which a bill of exchange or promissory note is considered to be international. According to the Convention, a bill of exchange is a written instrument which: a) contains an unconditional order whereby the drawer directs the drawee to pay a definite sum of money to the payee or to its order; b) is payable on demand or at a definite time; c) is dated; and d) is signed by the drawer. A promissory note is a written instrument which: a) contains an unconditional promise whereby the maker undertakes to pay a definite sum of money to the payee or to its order; b) is payable on demand or at a definite time; c) is dated; d) is signed by the maker.

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14. In order to qualify as an international bill under the Convention a bill of exchange must specify at least two of the places listed in article 2(1) of the Convention, and any two so specified places must be situated in different States. The places listed are: the place where the bill is drawn, the place indicated next to the signature of the drawer, the place indicated next to the

name of the drawee, the place indicated next to the name of the payee, and the place of payment. In its turn an international promissory note must specify at least two of the places listed in article 2(2) of the Convention, whereby any two so specified places must be situated in different States. The places listed are: the place where the note is made, the place indicated next to the signature of the maker, the place indicated next to the name of the payee, and the place of payment.

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15. There is one last requirement that an instrument fulfilling the above criteria must meet in order to qualify as an international instrument under the Convention: a certain place of importance situated in a State that is a party to the Convention must also be specified in the instrument. In the case of a bill of exchange, this will either be the place of drawing or the place of payment. In the case of a promissory note, this will be the place of payment. A State may however declare, in becoming a party to the Convention, that its courts will apply the Convention only if both the place indicated in the instrument where the bill is drawn, or the note is made, and the place of payment indicated in the instrument are situated in Contracting States. This is the only reservation permitted under the

Convention.

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16. The legal rules provided by the Convention will apply even where there has been an incorrect or false statement in respect of a place indicated in an instrument. This rule continues the common policy of domestic bills of exchange laws to the effect that instruments are to be judged only by their texts - the material appearing on their faces. It may also be justified on the pragmatic ground that to have provided otherwise could have cast doubts on the applicability of the rules and eventually impaired the free circulation of international bills and notes. The Convention leaves to domestic laws the question of sanctions that may be imposed where such a false or incorrect statement has been made in an instrument.

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17. Following the trend established by some domestic legal systems, the Convention does not allow negotiable instruments to be drawn on two or more drawees or to be issued payable to bearer. Neither restriction is significant in practice: nothing prevents a payee or special endorsee from making an instrument covered by the Convention payable to bearer by endorsing it in blank; and multiple-drawee instruments have proved to be quite rare and a source of confusion when they do occur.

18. The United Nations Convention on International Bills of Exchange and International Promissory Notes does not address international cheques. These have been the subject of a parallel project by UNCITRAL, the latest result of which is a draft Convention. The decision to draw up the uniform rules on international bills of exchange and international promissory notes and the uniform rules on international cheques as separate legal texts and not as a consolidated text was taken mainly to accommodate the civil law jurisdictions which have traditionally considered bills of exchange and cheques as separate instruments fulfilling separate functions. Work on the draft Convention on International Cheques was suspended in 1984, partly due to the fact that cheques were seen to play a less important role in international payments.

2. Interpretation of the Convention

19. An international body of rules aiming at the unification of a certain field of law can fulfil its ultimate purpose only if it is interpreted in a sensible and consistent manner by all legal systems applying it. Like many other international legal texts, the Convention requires courts that interpret it to have regard for its international character and for the need to

promote uniformity in its application and the observance of good faith in international transactions.

20. The goal of uniform interpretation is furthered by a scheme called CLOUT (Case law on UNCITRAL texts) under which the secretariat publishes abstracts of court decisions or arbitral awards that apply any of the Conventions or Model Laws that emanate from the work of UNCITRAL.

3. The concepts of "holder" and "protected holder"

21. In its desire to win commercial acceptance and free circulation of its instruments in international commerce, the Convention firmly upholds the principle of negotiability.

22. When dealing with the rights of the holder of an instrument and the limitations of those rights by the claims and defences of others, the drafters of the Convention were obliged to make a selection between the radically distinct, and yet justifiable, approaches of the civil and common law systems. The solution chosen was a pragmatic two-tier system that distinguishes between a mere holder and a "protected holder". The rights of the protected holder are freed from the claims and defences of

other persons to a greater extent than are the rights vested in the ordinary holder.

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23. The solution, although similar in technique to the scheme found in common law jurisdictions, is in fact a compromise since it borrows from both the civil and common law approaches. For instance, under the Convention, a person is not prevented from becoming a holder by the fact that the instrument was obtained under circumstances, including incapacity or fraud, duress or mistake of any kind, that would give rise to a claim to, or a defence against liability on, the instrument. That regime resembles the civil law much more than the common law on the issue. Perhaps most important, a person who is in possession of an instrument as an endorsee, or on which the last endorsement is in blank, and on which there appears an uninterrupted series of endorsements, can be awarded the protected holder status even though any endorsement appearing on the instrument was forged or signed by an agent without authority.

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24. The Convention enlarges the protection of protected holders by omitting any requirement that a protected holder has given value for the instrument. Furthermore, the test that one must meet in order to attain the

protected holder status is easily passed, and every holder is presumed to be a protected holder unless the contrary is proved.

25. Although not so well protected as a protected holder, a mere holder is not totally unprotected from adverse claims and defences. The holder in fact derives an appreciable degree of protection from the rules contained in the Convention that allow certain types of claims or defences only if the holder had knowledge of them or if it was involved in a fraud or theft concerning the instrument.

26. Under the Convention, the transfer of an instrument by a protected holder vests in any subsequent holder the rights to and on the instrument that the protected holder had. This so-called "shelter rule" again favours the negotiability of instruments. Its main value is to the protected holder as transferor since it preserves the value it invested in taking the instrument in the first place. It is not possible, however, for a holder who is not entitled to any protection to simply "wash" an instrument by transferring it to a protected holder and then taking it back.

4. Transfer warranties

27. Article 45 of the Convention brings

light to an area that is dealt with in different ways in the existing principal legal systems. Moreover, it brings into the realm of negotiable instruments law a principle that is left to the general law of sales or contracts in civil law jurisdictions.

28. The rule provides that, unless otherwise agreed, a person who transfers an instrument, by endorsement and delivery or by mere delivery, makes certain implied representations concerning the quality of the instrument and its lack of knowledge of any fact which could impair the right of the transferee to payment of the instrument against the primary obligor upon it. These representations as to quality consist of a warranty that the instrument does not bear any forged or unauthorized signature, and has not been materially altered. Liability of the transferor under the article is incurred only if the transferee took the instrument without knowledge of the matter giving rise to such liability.

29. The liability provided for here is in part weaker and in part stronger than the one incurred by an endorser. It is weaker in that it does not guarantee payment of the instrument and is available only for the benefit of the immediate transferee; it is stronger in that a

transferee may recover, even before maturity, the amount paid by it to the transferor, independently of any presentment, dishonour or protest.

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5. Guarantees and avals

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30. The provisions of the Convention dealing with the liability of the guarantor comprise one of the most attractive features of the text. The Convention subtly recognizes both the aval, or the Geneva type of guarantee, and the other, weaker type of guarantee known in common law jurisdictions.

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31. Article 46 of the Convention provides that payment of an instrument may be guaranteed either before or after acceptance, as to the whole or part of its amount, for the account of a party or the drawee. A guarantee may be given by any person, who may or may not already be a party. A guarantee is expressed by the words "guaranteed", "aval", "good as aval" or words of similar import, accompanied by the signature of the guarantor, or effected by a signature alone on the front of an instrument. In fact, any signature alone on the front of an instrument, other than that of the maker, the drawer or the drawee, is a guarantee. The words by which a guarantee is expressed determine the

nature of the obligation undertaken by the guarantor. In the absence of some notation specifying the party for whom a guarantee is given, the rules of the Convention interpret it as a guarantee for the drawee, acceptor or maker.

32. The crucial difference between the two types of guarantees recognized by the Convention ultimately lies in the defences that a guarantor may set up against a holder or a protected holder. They differ, depending upon the words used to express the guarantee (i.e. "guaranteed" produces a different result than "aval") and whether the guarantor is a financial institution. A guarantor that is a bank or other financial institution and which expresses its guarantee by a signature alone is considered to have contracted the stronger type of guarantee or "aval"; a guarantor that is not a bank or other financial institution and which does the same is considered to have contracted the weaker type of guarantee.

6. Other novel provisions of practical importance

33. The Convention introduces a number of provisions which ought to be of benefit in modern commercial practice. In this, the Convention reflects its recent development, while many of the rules found in the negotiable

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instruments laws of the world have not kept pace with changing business practices. The following novel provisions are of note:

(a) Instruments with floating rates of interest

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34. The Convention permits instruments to bear interest at a variable rate without loss of negotiability. Where the technique used is in accordance with the requirements of the Convention, the sum payable is deemed to be a definite sum despite the variable rate of interest. For the protection of debtors, the Convention permits rates to vary only in accordance with provisions stipulated in the instrument and in relation to one or more reference rates published or otherwise publicly available. As a further protection, the reference may not be subject, directly or indirectly, to unilateral determination by a person who is named in the instrument at the time the bill is drawn or the note is made, unless the person is named only in the reference rate provisions. There may also be stipulated limits to the permissible variations in the interest rate.

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(b) Rates of exchange outside instrument

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35. The Convention also permits reference to a rate of foreign exchange outside

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an instrument, e.g. a bank exchange rate in a particular place at a certain date, in calculating the amount payable under the instrument. Here as well, the sum payable under an instrument is deemed to be a definite sum even though the instrument states that it is to be paid according to a rate of exchange indicated in the instrument or to be determined as directed by the instrument.

(c) Instruments payable in instalments

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36. The Convention allows instruments that are subject to it to be made payable by instalments at successive dates. They may also contain an "acceleration clause", i.e. a stipulation that upon default in payment of any instalment the entire unpaid balance becomes immediately due.

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(d) Instruments denominated and payable in a monetary unit of account

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37. The Convention creates a regime in which instruments may be made payable in units of value other than the official currencies of nation States. This is accomplished by the definition of the terms "money" and "currency", which, in addition to referring to normal mediums of exchange adopted by Governments as their official currency, include a monetary unit

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of account which is established by an intergovernmental institution or by agreement between two or more States, e.g. the Special Drawing Right (SDR) of the International Monetary Fund, the European Currency Unit (ECU) and the Unit of Account of the Preferential Trade Area for Eastern and Southern African States (UAPTA). The Convention also contains a useful new rule selecting a currency of payment where the monetary unit of account in which an instrument is payable is not transferable between the person liable to pay the instrument and the person receiving the payment.

(e) Foreign currency obligations

38. The Convention attempts to avoid the controversies that can arise with instruments drawn or made in a currency other than that of the place where payment is to be made. The text provides that, except for the cases where the drawer or maker of an instrument has indicated that it must be paid in a specified currency other than the currency in which the sum payable is expressed, payment must be made in the latter currency. Where applicable, this rule will prevent a debtor from discharging its obligation by payment in another currency, e.g. a local one. It should be of assistance by providing greater certainty in cases involving currency value

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fluctuations.

39. In an effort to avoid infringing on exchange control regulations and other provisions relating to the protection of the currency of a State, the Convention provides a number of modifying rules to apply in exceptional circumstances.

(f) Signature not in handwriting

40. Here as well the Convention attempts to adapt the law to new technology by providing that the word "signature" includes not only a handwritten signature, but also a facsimile or an equivalent authentication effected by any other means.

(g) Rules on lost instruments

41. New rules are provided concerning lost instruments. In particular, a party from whom payment of a lost instrument is claimed may require the person claiming payment to give security in order to indemnify it for any loss which it may suffer by reason of the subsequent payment of the lost instrument.

(h) Short form of protest

42. The Convention relaxes the highly precise rules which are found in common law

jurisdictions on protest. It also provides new common rules for Geneva States that lack regulation concerning the procedures for effecting protest. Under the new regime, unless an instrument stipulates that protest must be made, protest may be replaced by a declaration written on the instrument and signed and dated by the drawee or the acceptor or the maker, or, in the case of an instrument domiciled with a named person for payment, by that named person. The declaration must be to the effect that acceptance or payment is refused. The Convention also extends to four business days the period that is usually allowed to make protest.

(i) Uniform period of prescription

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43. The Convention provides a single period of prescription or limitation of actions. It is set at four years for almost all actions arising on an instrument under the Convention. The only exception is that, where a party pays an instrument on which another was primarily liable, the party's action for reimbursement (recourse) is barred after one year.

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(j) Drawing of instruments "without recourse"

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44. The Convention contains a rule that

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should facilitate the practice of forfaiting. Under the new rule, the drawer of a bill may exclude or limit its own liability for acceptance or for payment by an express stipulation on the bill, e.g. by drawing the bill "without recourse". This stipulation will be effective only if another party is or becomes liable on the bill.

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7. Final clauses

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45. The final clauses contain the usual provisions designating the Secretary-General of the United Nations as depositary for the Convention. The Convention was open for signature until 30 June 1990 and remains subject to ratification, acceptance or approval by the signatory States. It is open for accession by all States which are not signatory States as from the date it was open for signature. According to article 89(1), the Convention enters into force on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.

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46. The Arabic, Chinese, English, French, Russian and Spanish texts of the Convention are equally authentic. The final clauses also contain provisions dealing with the implementation of the Convention in States having two or more

territorial units where different legal systems apply.

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Notes

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*[NOTE]

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This note has been prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only; it is not an official commentary on the Convention. Commentaries prepared by the secretariat on earlier drafts of the Convention appear in A/CN.9/213 (reproduced in UNCITRAL Yearbook, vol. XIII-1982) and A/CN.9/67 (reproduced in UNCITRAL Yearbook, vol. III-1972). 6. From the outset the work undertaken by UNCITRAL in this area consisted of finding ways to overcome the great many disparities between the various negotiable instruments laws of the world. Previous attempts at unifying the law of negotiable instruments had brought results only in a limited region or among countries of the same legal tradition. For instance, the efforts undertaken at the Hague in 1910 and 1912 and under the League of Nations in 1930 and 1931 culminating in the adoption of the Geneva Uniform Laws for Bills of Exchange, Promissory Notes and Cheques had resulted in the harmonization of the negotiable instruments

laws of only part of the civil law world and, on the common law side, a similar harmonization had flowed from the issuance of the Bills of Exchange Act 1882 of the United Kingdom, on which the United States Negotiable Instruments Law (superseded by article 3 of the Uniform Commercial Code) and the various Bills of Exchange Acts of the Commonwealth countries had been modelled. But notwithstanding these influences, considerable variation exists in the case law and commercial practice even among countries of the same legal tradition.

Note

Endnotes

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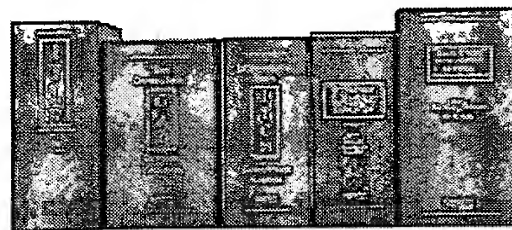
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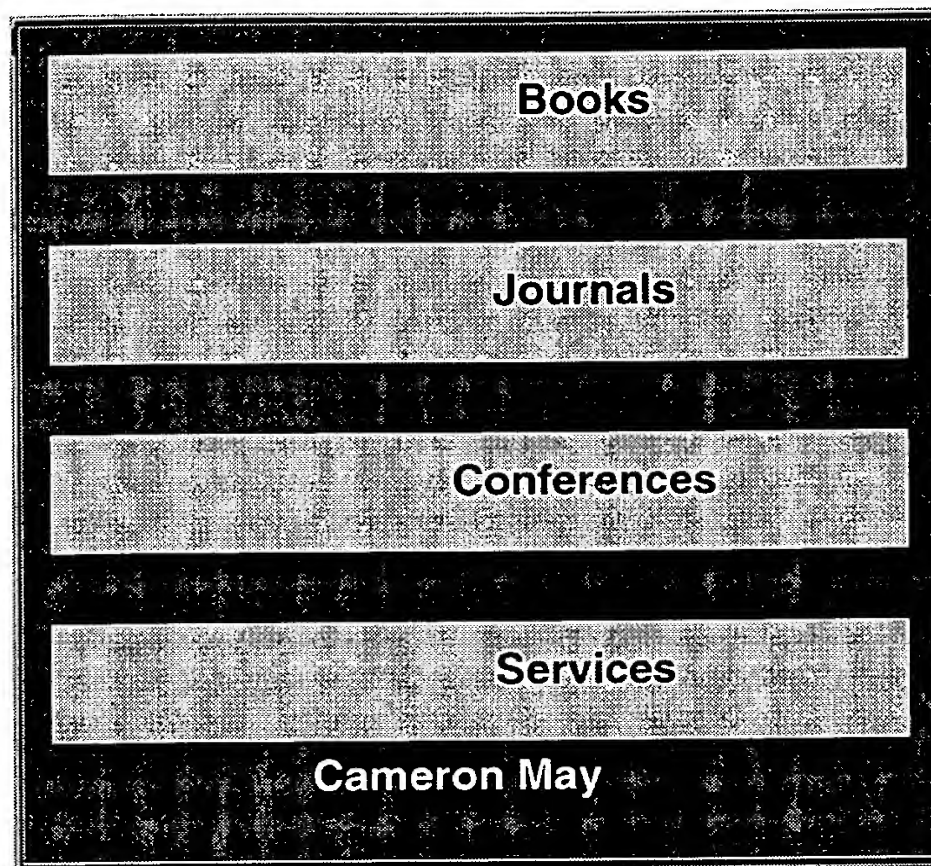
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